COMPENDIUM - TAXPAYER ASSISTANCE

Compendium of Judgments

Relied Upon Documents (RUDs) and Natural Justice in Adjudication

Non-supply of documents, denial of cross-examination and withheld seized records in show cause notices and orders - thirty-five judgments of the Supreme Court and High Courts, with relevant paragraphs highlighted

Supreme Court	High Courts	RUDs	Cross-Examination	Seized Records

BASED ON SUPREME COURT AND HIGH COURT DECISIONS OF FEBRUARY 1972 TO AUGUST 2026

Supreme Court, and the Delhi, Bombay, Gujarat, Madras, Allahabad, Calcutta, Gauhati and Kerala High Courts

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Relied Upon Documents and Natural Justice in Adjudication

Non-supply of RUDs, cross-examination and seized records in show cause notices and orders · Supreme Court and High Court decisions, February 1972 to August 2026 · Thirty-five judgments, with relevant paragraphs highlighted in light blue

About this compendium

This compendium brings together thirty-five judgments and orders of the Supreme Court of India and of the High Courts of Delhi, Bombay, Gujarat, Madras, Allahabad, Calcutta, Gauhati and Kerala, delivered between 7 February 1972 and 17 August 2026, on the documents and material on which a show cause notice or an adjudication order rests. It covers the show cause notice as the foundation of the case, the supply of relied upon documents (RUDs) and the return of non-relied upon documents, cross-examination of persons whose statements are relied on, the prejudice test for breach of natural justice, copies and return of seized documents and devices, and the limits on writ petitions where a statutory appeal is available. For a taxpayer facing a notice, it helps to judge what to ask for before replying and when a defect is likely to succeed; for a tax consultant, it supplies full copies of the authorities, with the operative paragraphs highlighted, for drafting a reply, an appeal or a writ petition. It is a companion to Guide No. 03.

What the decisions establish

- **The show cause notice is the foundation.** A notice must state the specific case and material against the noticee; a vague notice, or a provision not invoked in it, cannot support the demand (*Brindavan Beverages*, paras 9 and 10; *Ballarpur Industries*, para 21). A summary in Form GST DRC-01 is not a substitute for the show cause notice (*Construction Catalysers*).
- **Relied upon documents must be supplied.** Orders passed without the RUDs have been set aside and sent back for a fresh hearing (*Daksh Overseas*, para 5; *Surendra Prasad Yarlagadda*, para 4; *Sai Auto Mobiles*, para 8), and documents not relied on are to be returned (*R S Windlass*, para 13; *Universal Dyechem*, para 6). Non-furnishing of a document matters where prejudice is shown (*Madura Coats*, paras 13 and 15).
- **Cross-examination.** Where statements are the basis of the case, cross-examination of their makers is part of a fair hearing (*Andaman Timber*; *Basudev Garg*, para 10; *Him Logistics*, para 17), and the Kerala High Court held that in appropriate cases denial in section 74(9) proceedings voids them (*Nishad K.U.*, para 25). It is not absolute: it was refused for informants (*Kanungo*, para 12) and co-noticees (*Nishad K.U.*, para 24), and where an offer was not availed (*Punjab Stainless Steel*) or documents had been disclosed (*Sazid Ali Khan*).
- **Prejudice.** Natural justice is flexible; breach of a procedural rule is tested on prejudice, which must be real and shown on the facts, but an authority cannot skip a hearing because it thinks it useless (*State Bank of Patiala*; *Dharampal Satyapal*; *Sudhir Kumar Singh*).
- **Seized documents and devices.** Copies of seized documents and data are to be given under section 67(5) CGST Act, and withholding cannot go on indefinitely (*High Ground*, para 17; *Balaji Enterprises*, para 13; *Kashish Optics*, para 35). Devices may be cloned and returned (*Rakesh Kumar Gupta*, para 15), and seized records needed for the defence are to be handed over before the order is made (*Priti Builders*, para 17). Where RUDs reach the noticee only during the inquiry, the order has been quashed and remanded to the notice stage (*Singhvi Trandelink*, paras 3 to 5).
- **Writ or appeal.** Courts have declined writs where a statutory appeal lies, even on a plea of non-supply of RUDs, where the petitioner knew of the notices, took part or showed no prejudice (*Toshniwal*, para 13; *Shivani Enterprise*, HC para 8 and SC para 1; *Sandeep Sandha*; *Sazid Ali Khan*, para 9; *A V International*), but not where jurisdiction itself is questioned (*Godrej Sara Lee*).
- **Status to watch.** Some cases are not GST cases: *State Bank of Patiala* is a service matter, *Sudhir Kumar Singh* a tender case, and several arise under the Customs and Central Excise laws. Most GST orders are orders on writ petitions on their own facts. Check later developments before citing.

How the compendium is arranged

- Cases are arranged by date of decision, oldest first, from 1972 to 2026. A separator page before each judgment gives its details, a short holding and the paragraphs highlighted.
- The judgments are reproduced as supplied in the folder, with paragraph numbers as printed, each page fitted on an A4 page. The only additions are the light blue highlights (the compiler's selection of relevant passages), the separator pages and the compendium page number at the foot of each page.
- Citations, benches and dates are taken from the copies reproduced here, and the holdings are the compiler's short summaries. This is a research aid and not legal advice.

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CASE 1 OF 35

Kanungo & Company v. Collector of Customs & Ors.

Court	Supreme Court of India
Bench	S.M. Sikri, A.N. Ray and M.H. Beg, JJ.
Date	07.02.1972
Case no. / citation	AIR 1972 SC 2136; (1973) 2 SCC 438

Holding in brief

Confiscation of watches under the Sea Customs Act. The notice set out all the material relied on, and the Court held that natural justice did not require informants to be produced for cross-examination. It also held that Customs must discharge the onus on the facts relied on in the notice: confiscation of 54 watches (statements in the notice) and one more watch was quashed.

Paragraphs highlighted

Paras 12, 13 and 16. Highlighted passages are on compendium pages 10-11.

Status

Final judgment; appeal allowed in part.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 7.

Kanungo & Company vs Collector Of Customs And Ors. on 7 February, 1972

Equivalent citations: AIR1972SC2136, 2003(89)ECC764, 1983(13)ELT1486(SC), (1973)2SCC438, 1972(4)UJ712(SC), AIR 1972 SUPREME COURT 2136, 1973 2 SCC 438, 1973 SCC(CRI) 846, 1973 2 SCJ 219

Bench: S.M. Sikri, A.N. Ray, M.H. Beg

JUDGMENT

1. This is an appeal by certificate granted to the appellant by the Calcutta High Court against its judgment, in appeal, reversing the decision of the Single Judge who had quashed the order dated June 15, 1963, passed by the Additional Collector of Customs, Calcutta, confiscating 280 watches of the appellant under Section 167(8) of the Sea Customs Act, read with, Section 3(2) of the Imports and Exports (Control) Act, 1947.

2. The relevant facts for the determination of the points raised before] us are as follows : The appellant is a firm carrying on business as dealer, importer and repairer of watches. The appellant's premises at 129, Radha Bazar Street, Calcutta, were searched on October 17, 1959, under a search' warrant issued by the Chief Presidency Magistrate, Calcutta. In the course of! the search, the Customs authorities seized 390 pieces of watches and took: them away. By an order dated January 27, 1960, the Assistant Collector of Customs released 43 watches out of the 390 watches which had been seized.; On September 5, 1960, he released 64 more watches, and on January 11, 1961, he released another three watches and confiscated the remaining 280 pieces of wrist watches.

3. The appellant filed an appeal before the Additional Collector of Customs who quashed the confiscation, without going into the merits of other grounds, as according to him principles of natural justice had not been complied with in the case.

4. A fresh notice was thereafter served on the appellant to show cause why the watches seized should not be confiscated. The appellant thereupon filed a petition in the High Court challenging the initiation of fresh' proceedings in respect of the 280 watches. A consent order was made by the High Court, and in pursuance of that order the Deputy Collector of Customs, decided certain preliminary issues against the appellant, on April 19, 1962.' Aggrieved by this decision, the appellant filed another petition in the High Court. Before the High Court Mr. Kar, counsel for the Customs, agreed to' certain clarifications, namely, (1) that if the petitioner (appellant) is found1 guilty of having violated the order under Section 3 of the Imports & Exports (Control) Order made in 1955, and (2) if it be found to have imported watches across the customs frontiers as notified under Section 3A of the Sea Customs Act, then only the charge will be taken as established. On these clarifications the High Court held that the charge levied against the appellant did not suffer from vagueness, as complained by the appellant. The High Court concluded:

> With the two clarifications made in the charge the adjudication against the petitioner should now proceed.

Subject to the clarifications as herein before made, I discharge the Rule. Let the adjudication proceedings against the petitioner now proceed on the charges as hereby clarified. There will be no order for costs.

The adjudication proceedings have been held up for long long years and I direct the respondents customs authorities to finish the adjudication proceedings as early as possible.

This order was passed on March 7, 1963.

5. It appears that the Customs Authorities sent a memo, dated May 17, 1963, directing the appellant to show cause against the seizure of 280 pieces of wrist watches by the Customs Department. On May 25, 1963, the appellant sent its reply to the memo. The appellant first contested the jurisdiction of the Assistant Collector, and after raising some legal objections, stated in para 6 as follows :

We have sufficiently explained our lawful acquisition and our legal possession of the said wrist watches in our various explanations submitted to you from time to time and we refer you to our explanation dated 22-8-1960, 2-2-1960, 27-4-1962, 20-3-1962, 6-2-1962 to you and also to our explanation contained in our petition filed before you.

In para 8 of its reply, the appellant asserted that principles of natural justice had been violated. In para 10 it was alleged that "the Customs Department has not been able to produce any evidence that the said goods are smuggled goods or that these goods have been brought across any Customs from Frontier of India or in violation of any of the provisions of Sea Customs Act or in violation of any of the notification under that said Act."

6. On June 15, 1963 (Order issued on August 7, 1963) the Additional Collector, after giving reasons, passed an order confiscating the watches under Section 167(8) Sea Customs Act, read with Section 3(2) of the Imports and Exports (Control) Act, 1947 After referring to the history of the litigation and the reply of the appellant, dated May 25, 1963, it was stated in the order that on June 13, 1963, the appellant company was granted a personal hearing, when its representatives desired to be furnished with the details of the enquiries conducted by the Customs House. The Additional Collector of Customs also referred to their contention that the watches had been purchased between 1956 and 1959 and they had produced vouchers for the same and as such they had been able to establish that the watches had not been obtained by them in an illegal way.

7. The Additional Collector gave the following reasons for coming to his conclusions:

The party originally sought to connect the watches under seizure with certain transactions some of which have been found on enquiry to be false and fictitious. The result of the enquires and the evidence on which the charges were framed were made known to the party

specifically under para 6 to 19 of the Show Cause Notice. The party in his reply to the show cause notice has merely denied the charges but could not make any submission in rebuttal of those specific allegations The watches under seizure are of foreign origin. The cash memos and vouchers etc. produced by the party in disclosure of his knowledge about the source from which these watches were obtained and in proof of their licit source have been found on enquiry to be false and fictitious. Besides in respect of 11 pieces of watches (item Nos. 22, 34, 65, 66, 74, 80 & 95 of the investory) no document whatsoever showing their licit source could be produced. It is clear that these watches could not have been legally imported. 1 therefore hold that these watches were imported into India clandestinely from a foreign country and the party made a desperate attempt to connect these watches with some false and fictitious transactions.

8. The appellant then filed a writ petition challenging this order. Banerjee, J., quashed the order on the ground that the Customs authorities had failed to prove that the appellant had imported the wrist watches without valid licence from beyond the Customs frontiers of India.

9. The High Court (Bose C.J. and B.C. Mitra, J.) allowed the appeal. The High Court held that the onus of proof that the wrist watches were lawfully imported had shifted on to the appellant after the Customs Authorities had informed the appellant of the results of the enquiries and investigations regarding the claim made by it with regard to the possession of the said watches, and this onus the appellant had failed to discharge. The High Court observed :

The watches were seized from the possession of the respondent No. 1 (appellant) who had not obtained a licence or a customs clearance permit for importation of the same. They were of foreign make and must have been imported across the customs frontier. The explanations offered by the respondent No. 1 regarding its coming into possession of the same between 1956 and 1957 were found, upon enquiries by the customs authorities, to be false, the result of those enquiries were communicated to the respondent No. 1 who was thereafter heard by the adjudicating officer. Yet no attempt was made by the respondent No. 1 to substantiate its claim regarding lawful importation of the watches. In this same matter, the respondent No. I came to this Court twice previously with writ petitions, for relief, and appropriate reliefs were granted to it. Yet it failed to satisfy the customs authorities that 280 watches were not imported in violation of the statutory restrictions. The customs authorities came to the conclusion that the said 280 watches were illegally imported and thereupon made an order for confiscation of the same. It is not for this Court, in exercise of its jurisdiction under Article 226 of the Constitution, to revise, set aside or quash this order, in the facts of this case.

10. The High Court granted the certificate under Article 133(1)(a) and (b) of the Constitution and the appeal is now before us.

11. The learned Counsel for the appellant contended that the burden on the Customs Authorities had not been discharged. He urged that there was no evidence that the watches had not been

brought into India lawfully. He urged, secondly, that the impugned order wrongly placed the burden on the appellant, thirdly, that the impugned order was made in contravention of natural justice; and fourthly, that there was no evidence that watches had been imported in contravention of law.

12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our-opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed lo be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.

13. There is also no force in the second point because we do not read the impugned order as having wrongly placed the burden on the appellant. What the impugned order does is that it refers to the evidence on the record which militates against the version of the appellant and then states that the appellant had not been able to meet the inferences arising there from. In our opinion, the High Court was right in holding that the burden of proof had shifted on to the appellant after the Customs Authorities had informed the appellant of the results of the enquiries and investigations.

14. This also disposes of the first point. As we have said, the burden was on the Customs Authorities which they discharged by falsifying in many particulars the story put forward by the appellant.

15. Coming to the fourth point, we are of the opinion that except for certain items there is evidence in favour of the conclusion of the High Court. It cannot be disputed that a false denial could be relied on by the Customs Authorities for the goods had been illegally imported. In Issardas Daulat Ram v. Union of India (1962) Supp. S.C.R. 358 : 363 the credibility of the story about the purchase of gold from certain parties was treated as a relevant piece of evidence.

16. It, however, seems to us that there is something to be said for the appellant in respect of 54 pieces of watches which are stated to have been received by the appellant for correction and repair. In paras 8, 9 and 10 of the show-cause notice it was stated as follows :

> 8. Of the persons from whom the said 54 pes watches are alleged to have been received for correction and repair, almost all of them made more or less stereotype statements on the following lines.
>
> (a) That the watch in question was imported into India by relative who had arrived from East Pakistan.

(b) That the watches were presented to him/her by a relative.

(c) That the watch was new at the time of presentation but not keeping correct time.

(d) That the watch was given to M/s. Kanungo & Co. for correction/repair as M/s. Kanungo & Co. were known to them for a long time.

(e) That he/she was not sure about the watch band as he/she had asked M/s. Kanungo & Co. to change the band.

(f) That the cost for correction had not been settled but had been left to M/s. Kanungo & Co.

(g) That he/she has no documentary evidence whatsoever in support of the watch in question having been legally imported or acquired.

9. Further some parties from whom watches were alleged to have been received for repairs under Repair Receipts produced and which watches were claimed by M/s. Kanungo & Co. to have been seized on 17-10-59 have confirmed that they did never give any watches to M/s. Kanungo & Co. and neither were they in possession of any repair receipts but that they have been falsely implicated.

10. For the reasons mentioned heretofore the bonafide of the correction slip and Repair Receipt Books cannot be accepted and only goes to show that M/s. Kanungo & Co. have as an after thought made an attempt to satisfactorily account for 54 pieces watches which are in fact not covered by any documentary evidence to establish legal acquisition or legal importation and there are reasons to believe prima facie that these 54 watches were illegal imported into India.

In our opinion it would be impossible for a watch repairer to produce any further evidence in order to justify possession of watches. A watch-repairer cannot be expected to go into the history of the acquisition of a watch when it is given for repair. The onus being on the Customs Authorities, the type of the statements mentioned in para 8 cannot he held to be sufficient to discharge the onus which lay on them. Further, no indication has been given in para 9 as to how many parties had stated that they never gave any watches to the appellant. The apparent bonafides of the correction slip and receipt book mentioned in para 10 could not be ignored on the reasons given by the Customs Authorities. Para 10 proceeds on the basis that the onus is on the appellant to prove that the watches had not been illegally imported.

17. There is also one wrist watch mentioned in para 18, which in our opinion has been wrongly confiscated. In para 18 it is stated :

18. I piece 'Homer' wrist watch (item 51 of the inventory) was claimed by M/s. Kanungo & Co. to have been imported from M/s. Rornar Watch Co. Switzerland under Factory Invoice No, 1007/ PM/JN dated 8-2-55 and cleared under Bill of entry No. Cash 1857 dated 9-2-55. This 1 piece was not shown in the stock Register of M/s. Kanungo & Co. for 1958-59 where the balance shown was 'Nil' and as such the watch seized could not possibly be the same watch as was imported by M/s. Kanungo & Co. and had been illegally imported into India.

The fact that it was not shown in the stock register is not material to show that it had been illegally imported. It is not stated by the Authorities that the invoice and the bill of entry had nothing to do with this watch.

18. Accordingly, we allow the appeal in part and quash the order dated June 15, 1963, regarding the confiscation of 54 watches mentioned in para 8 and the one watch mentioned in para 18 of the show cause notice. There will be no order as to costs in this appeal.

CASE 2 OF 35

State Bank of Patiala & Ors. v. S.K. Sharma

Court	Supreme Court of India
Bench	B.P. Jeevan Reddy and K.S. Paripoornan, JJ.
Date	27.03.1996
Case no. / citation	(1996) 3 SCC 364

Holding in brief

Disciplinary enquiry; copies of witness statements were not given, though the employee could inspect them. The Court held that breach of a procedural provision does not by itself vitiate the order: the test is prejudice, that is, whether a fair hearing was had. Service-law case, but the leading authority on the prejudice test for non-supply of documents.

Paragraphs highlighted

Summary of principles, item (3); application to non-supply of copies of statements (unnumbered paragraphs). Highlighted passages are on compendium pages 34-36.

Status

Final judgment; appeal allowed. Not a tax case.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 14.

PETITIONER:
STATE BANK OF PATIALA & ORS

Vs.

RESPONDENT:
S.K.SHARMA

DATE OF JUDGMENT: 27/03/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 1669 1996 SCC (3) 364
JT 1996 (3) 722 1996 SCALE (3)202

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P JEEVAN REDDY,J

Leave granted. Heard counsel for the parties.

This appeal preferred against the judgment and decree of the Punjab and Haryana High Court dismissing the second appeal filed by the appellant raises certain basic questions concerning natural Justice in the context of disciplinary proceedings.

A disciplinary enquiry was held against the respondent in respect of two charges. They are:

"Charge No.1

'That he did not deposit the sum of Rs.10,000/- handed over to him by Sh. Balwant Singh in December 1985, in the crop loan account of Sh. Jarnail Singh S/o Sh.Lahra Singh. Later on the entire amount of Rs.11,517=50 outstanding in the account was deposited by someone on the 22nd March 1986 under the signature of ah Balwant Singh. He thus utilised the amount of Rs.10,000/- for approximately 3 months for his own advantage.'

Charge No.II

'That hes in contravention of Regulation 50(4) of the State Bank of Patiala (Officers') Service Regulations 1979, issued an undated letter in, his own handwriting addressed to the Tehsildars Bhatinda for revocation of Mutation on the land mortgaged to the Bank even when the crop loan account of Shri Jarnail Singh was not

adjusted. He thus jeopardized the interests of the Bank'."

At the relevant time, the respondent was working as the Manager of Kot Fatta branch Of the appellant-Bank. The charge against the respondent, in short. is one of temporary misappropriation. One Jarnail Singh had taken a loan of Rupees ten thousand from the Bank. After Jarnail Singh's death, his son, Balwant Singh, came and handed over a sum of Rupees ten thousand to the respondent in Decembers 1985 in discharge of the said loan. In February, 1986, the respondent was transferred to another branch. In March, Balwant Singh went to the Bank and discovered that the amount paid by him to the respondent was not credited to his/his father's account. Soon thereafter, a sum of Rs.11,517.50p was deposited in the Bank in the name of Balwant Singh. The appellant Bank's case is that having received the amount from Balwant Singh in December, 1985, the respondent did not credit the said amount into the Bank account until March, 1986, though he issued a letter addressed to Tehsildar, Bhatinda in December, 1985 itself to the effect that since the crop loan amount has been adjusted, the entry regarding mortgage of land of Jarnail Singh in favour of the Bank be revoked.

Before ordering a regular oral enquiry, the Bank had directed Sri K.J.Wadhan and Sri P.N.Garg to conduct a preliminary enquiry. The said officers examined witnesses including Balwant Singh and the Patwari of the village, Sri Kaur Singh, and also gathered necessary documentary evidence. It is on the basis of the material so gathered and the preliminary report they submitted that the regular oral enquiry was ordered. In the enquiry, six witnesses (PWs.1 to 6) were examined on behalf of the Bank and three witnesses (DWs.1 to 3) on behalf of the respondent. The Bank examined Sri K.J.Wadhan and Sri P.N.Garg who had conducted the preliminary enquiry and recorded the statements of Balwant Singh among others. The Patwari, Kaur Singh, was examined as PW-5. The other three witnesses, PWs.3, 4 and 6 are the employees of the Bank who spoke to the various aspects of the Bank's case. Balwant Singh who was the complainant did not appear as a witness at the regular enquiry inspite of several attempts made to procure his presence, though his statement had been recorded during the preliminary enquiry.

At the conclusion of the enquiry, a report was submitted by the enquiry officer holding both the charges established. The competent authority accepted the report and ordered the removal of the respondent from the service. An appeal and a review submitted by the respondent were dismissed. The respondent thereupon instituted a suit in the court of learned Sub-Judge, IInd Class, Bhatinda for a declaration that the order of removal is void and illegal and for a declaration that he continues to be in service with all consequential benefits. The Trial Court rejected all the grounds urged by the respondent in support of his case except one, viz., that "the list of witnesses and list of documents were not supplied along with charge-sheet and then the same were not supplied by the presenting officer during the course of enquiry". On the only ground that "this argument of the learned, counsel for the plaintiff was not meted out by the learned counsel for the defendants in, his written arguments", the Trial Court held the allegation established. It found that the said failure to supply is violative of Regulation 68(X)(b)(iii) of the State Bank of Patiala (Officers') Service Regulations, 1979 and on that basis, decreed the suit. On appeal, the judgment and the decree of the Trial Court was affirmed. The Appellate Court

found the following facts: during the course of enquiry, the presenting officer filed a provisional list of documents/ witnesses (P-2) on June 2,1987. The list contained nine documents including the statements of Kaur Singh, Patwari, and Balwant Singh, complainant. The said documents were marked as P-3 to P-11. Though a copy of the list of documents/statements was supplied to the respondent-plaintiff, copies of the documents P-3 to P-11 were not supplied to him. He was however, advised , examine and take notes of the said documents/ statements. This opportunity was given only half an hour before the commencement of the enquiry proceedings. The Appellate Court found that in the above circumstances, there was a clear violation of Regulation 68 which has prejudicially affected the respondent's defence. The second appeal filed by the Bank was dismissed by a learned single Judge of the High Court affirming the said finding. The learned Judge in fact assigned one more ground in support of the respondent's case, viz., that inasmuch as Balwant Singh was not examined, it is a case of no evidence'. Before entering upon the discussion of issues arising herein, it is well to reiterate the well-accepted proposition that the scope of judicial review in these matters is the same whether it is a writ petition filed under Article 226 of the Constitution of India or a suit filed in the civil court.

To clear the ground for considering the main question arising herein, we may first dispose of the additional ground assigned by the High Court. Because Balwant Singh, the complainant, was not examined, it cannot to be a case of no evidence. As stated above, as many as six witnesses were examined including two officers of the Bank who conducted the preliminary enquiry and had recorded the statements of witnesses including Balwant Singh. They spoke to the preliminary enquiry conducted by them and the Statement of Balwant Singh recorded by them. Other Bank officials were examined to establish that the letter Exh.P-6 addressed to the Tehsildar, Bhatinda was in fact written by and bears the signature of the respondent. Kaur Singh, Patwari, was also examined. It is on the basis of this evidence that the enquiry officer had come to the conclusion that both the charges were established inspite of non-examination of Balwant Singh. Neither the Trial Court nor the first Appellate Court have found that it is a case of no evidence. The additional ground assigned by the High Court is, therefore, unsustainable in law.

Now, coming to the main ground upon which the plaintiff's case has been decreed, viz., the nonfurnishing of the copies of the statements of witnesses and documents, the factual position as found by the Appellate Court is to the following effect: though a list of documents/witnesses was furnished to the respondent before the commencement of the enquiry, the copies of the documents and statements recorded during the preliminary enquiry were not supplied to the respondent. Half an hour before the commencement of the enquiry proceedings, the respondent was advised to peruse the said documents and the statements of witnesses which he did. Balwant Singh was not examined at the regular enquiry. The other witness who was examined during the preliminary enquiry, Kaur Singh, Patwari, was examined at the regular enquiry. The question is whether on the above facts, it can be held that there is a violation of Regulation 68 and whether the violation, if any, vitiates the enquiry. Regulation 68 insofar as is relevant, reads thus:

"(a) The inquiring authority shall
where the officer does not admit

all or any of the articles of charge furnish to such officer a list of documents by which and a list of witnesses by whom, the articles

(b) The inquiring authority shall also record an order that the officer may for the purpose of preparing his defence:

i)Inspect and take notes of the document listed within five days of the order or within such further time not exceeding five days as the inquiring authority may allow:

ii) submit a list of documents and witnesses that he wants for enquiry.

iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority.

(Emphasis added)

iv) gave a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery of production of the documents referred to at (ii) above."

[Taken from the judgment of the Appellate Court]

It is sub-clause (iii) which is said to have been violated in this case. The sub-clause provides that copies of the statements of witnesses, if any, recorded earlier shall be furnished to the delinquent officer "not later three days before the commencement of the examination of witnesses by the Inquiring Authority." From the Appellate Court judgment, it appears that on June 2, 1987, the respondent was given an opportunity of perusing and taking notes from the said documents and statements of witnesses and that the enquiry also commenced on that day. lt, however, appears from a copy of the enquiry report that the six witnesses for the Bank were examined on the following dates: S/Sri K.S.Wadhan and P.N.Garg (PWs.1 and 2) on July 6, 1987, S/Sri Mangat Rai Verma, Prakash Singh and Kaur Singh (PWs.3, 4 and 5) on July 7, 1987 and Sri Ashwini Kumar The three defence witnesses so examined on July 27, 1987. It is thus evident that though copies of the statements of Kaur Singh and Balwant Singh were not supplied to the respondents he was permitted to peruse the same more than three days prior to the examination of witnesses. It is necessary to emphasize that sub-clause -(iii) aforesaid only speaks of copies of statements of witnesses recorded earlier and does not refer to documents. So far as the documents are concerned the only right given to the delinquent officer by Regulation 68 is to inspect and take notes and that has been done. Coming back to the statements of witnesses Balwant Singh was not examined at the oral enquiry at all as stated above. Only Kaur Singh, Patwari, was examined. The issue boils down to this whether the failure to literally comply with sub-clause (iii) of clause (b) of Regulation

68(ii)(x)vitiates the enquiry altogether or whether it can be held in the circumstances that there has been a substantial compliance with the said sub-clause and that on that account, the enquiry and the punishment awarded cannot be said to have been vitiated.

Sub-clause (iii) aforesaid is indisputably part of a regulation made in exercise of statutory authority. The sub-clause incorporates a facet of the principle of natural justice. It is designed to provide an adequate opportunity to the delinquent office- to cross-examine the witnesses effectively and thereby defend himself properly. It is relevant to note in this behalf that neither the enquiry officers' report nor the judgment of the Trial Court, Appellate Court or High Court say that the respondent had protested at the relevant time that he was denied of an adequate opportunity to cross-examine the witnesses effectively or to defend himself properly on account of non-supply of the statements of witnesses. The Appellate Court, on the contrary, has recorded that when he was advised to peruse, examine and take note; from the documents including the statements of witnesses [Kaur Singh and Balwant Singh], the only objection raised by the respondent was that "the documents marked Exh.P-6, P-10 and P-11 were only photostat copies and not originals and should not be considered or marked exhibits". [Exhs. P-6, P-10 and P-11 are documents other than the statements of witnesses, i.e., of Kaur Singh and Balwant Singh.] Moreover, as pointed out above, the examination of witnesses began long after the expiry of three days from the day on which the respondent was advised to and he did peruse the documents and statements of witnesses. In the circumstances, it is possible to say that there has been a substantial compliance with the aforesaid sub-clause (iii} in the facts and circumstances of this case though not a full compliance. This in turn question whether each and every violation of rules or regulations governing the enquiry automatically vitiates the enquiry and the punishment awarded or whether the test of substantial compliance can be invoked in cases of such violation and whether the issue has to be examined from the point of view of prejudice. So far as the position obtaining under the Code of Civil Procedure and Code of Criminal Procedure is concerned, there are specific provisions thereunder providing for such situation. There is Section 99 of the Code of Civil Procedure and Chapter 35. of the Code of Criminal Procedure. Section 99 C.P.C. says, "no decree shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any misjoinder or nonjoinder of parties or causes of action or any error defect or irregularity in any proceeding in the suit, not affecting the merits of the case or the jurisdiction of Court." Section 465(1) of the Criminal Procedure Code, which occurs in Chapter 35 similarly provides that "subject to the provisions hereinbefore contained no finding sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this code or any error or irregularity in any sanction for the prosecution unless in the opinion of that court a failure of justice has in fact been occasioned thereby."

It is not brought to our notice that the State Bank of Patiala (Officers') Service Regulation contains provision corresponding to Section 99 C.P.C. or Section 465 Cr.P.C.

Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principle underlying Section 99 C.P.C. and Section 465 Cr.P.C. is applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the authority competent to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable For examples take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/material in support evidence of the other side. If no such opportunity is given at all inspite of a request therefor, lt will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions it would be possible to apply the theory of substantial compliance or the test of prejudices as the case may be. The position can be stated in the following words: Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (s) In respect of procedural provisions other than of a fundamental nature the theory of substantial compliance would be available. In complain objection on this score have to be judged on the touch-stone of prejudices as explained later in this judgment. In other words the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to he decided in each case having regard to the nature and character of the relevant provision.

It would be appropriate to pause here and clarify a doubt which one may entertain with respect to the principles aforestated. The several procedural provisions governing the disciplinary enquiries whether provided by rules made under the proviso to Article 309 of the constitutions under regulations made by statutory bodies in exercise of the power conferred by a statute or for that matter, by way of a statute] are nothing but elaboration of the principles of natural justice and their several facets. It is a case of codification of the several facets of rule of audi alteram partem or the rule against bias. One may ask, if a decision arrived at in violation of principles of natural justice is voids how come a decision arrived at in violation of rules regulations/statutory provisions incorporating the said rules can be said to be not void in certain situations. It is this doubt which needs a clarification - which in turn calls for a discussion of the question whether a decision arrived at in violation of any and every facet of principles of natural Justice is void.

The first decision on this aspect is that of the House of Lords in Ridge v. Baldwin [1964 A.C.40] and the oft-quoted words are that of Lord Reid, to wit

"Then there was considerable

argument whether in the result the watch committee's decision was void or merely voidable. Time and time again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void and that was expressly decided in Wood v. Woad (1874) LR 9 Ex.190. I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case."

It must, however, be remembered that was a case where the appellant-chief constable was dismissed without notice and without enquiry. He was tried and acquitted on a criminal charge of conspiracy to obstruct the course of justice. Two other police constables who were tried alongwith him were convicted. While acquitting the appellant, the learned Judge commented adversely at more than one place upon the leadership qualities of the chief constable suggesting that he was found wanting in that respect. Thereupon the Brighton Watch Committee, without giving any notice or hearing to him dismissed him from service. The violation was thus of a fundamental nature. It was a case of total violation of the principle of natural justice*. There could not be a greater violation of natural justice than that.

We may now consider the decision of the Privy Council in M.Vasudevan Pillai v. City Council of Singapore [1968 (1) W.L.R.1278]. The facts of this case are rather involved. The Singapore Municipal Ordinance provided that in a case of misconduct which in the opinion of the head of the department merited dismissal the head of the department should outline the case to the president or the deputy president and hold an

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*It is in this context, it was observed that it is not open to an authority which has not given a notice or hearing to the affected person to say that even if it had given such an opportunity the affected person had nothing worthwhile to say or that the result would not have been different even if such a notice or hearing is given. Of course no definite opinion was expressed on this aspect in Ridge v.Baldwin, as pointed out by the Privy Council in Maradana Mosque Trustees v. Mahmud (1967 (1) A.C.13 at 24).

enquiry, The record of enquiry shall thereafter be considered by the president or the deputy president who was entitled to cause such further enquiry as he may think appropriate and then make his final decision. If the decision was to dismiss the employee, the decision was to be conveyed by the head of the department to the employee who was given a right of appeal to the Establishments Committee. The appellants were daily rated unskilled labourers. On the allegation of misconducts an enquiry was held by the head of the department wherein the appellants participated, Thereafter, the deputy president asked certain questions from the head of the department and the latter supplied the necessary information. This was not disclosed to the appellants. They were dismissed. On appeals a de novo hearing was afforded to the appellants by the Establishments Committee. Thereupon the appellants brought an action in Singapore Courts which ultimately reached the Privy Council.

he Privy Council recalled in the first instances the statement of law on this subject as stated by Lord Reid in Ridge v. Baldwin to the effect that unless the conditions of service are governed by a statute or statutory rules principles of natural justice have no place in a dispute between master and servant. The statement from Ridge runs thus:

> "The law regarding master and servant is not in doubt There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none But if he does so in a manner not warranted by the contract he must pay damages for breach of contract So the question in a pure case of master and servant does not at all depend on whether the master has heard-the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them."

On the facts of the appeal before them, the Privy Council held, in the first instance, that at the stage of the deputy president asking questions and the head of the department supplying him information, the principles of natural justice had no application Alternately, they held that even if the said principles did apply, even then it must be held that the said violation was cured by what happened before the Establishments Committee [i.e., on appeal] Since there was a re-hearing before the Establishments Committee and evidence was called de novo and also because no grievance was made with to the proceedings before the Establishments Committee, the invalidity arising from the violation of principles of natural justice at the earlier stage was cured. This decision was referred with approval in 1980 by the Privy Council in Calvin v. Carr** [1980 A.C.574] in the following words:

> "Their Lordships regard this as a decision that in the context, namely one of regulations concerning establishments procedures, justice can be held to be done if, after all these procedures had been gone through, the dismissed person has had a fair hearing and put his case. It is thus an authority in favouring the existence of the intermediate category, but not necessarily one in favour of a general rule that first instance defects are cured by an appeal. Their Lordships are also of opinion that the phrase 'hearing of evidence de novo,' though useful in that case, does not provide a

universal solvent. What is required is examination of the hearing process, original and appeal as a whole, and a decision on the question whether after it has been gone through the complainant has had a fair deal of the kind that he bargained for."

(Emphasis added)

**Calvin v. Carr was a case where the first- contention of the plaintiff was that since the decision against him was arrived at in violation of the principle of natural justice, it was void and no appeal lay against an order which was void. "A condition precedent, it was said, of an appeal was the existence of a real, even though voidable decision". The Privy Council dealt with the argument in the following words: "This argument has led necessarily into the difficult area of what is void and what is voidable, as to which some confusion exists in the authorities. Their Lordships opinion would be, if it become necessary to fix upon one or other of these expressions, that a decision made contrary to natural justice is void, but that, until it is so declared by a competent body or court, it may have some effect, or existence, in law. This condition might be better expressed by saying that the decision is invalid or vitiated. In the present context, where the question is whether an appeal lies, the impugned decision cannot be considered as totally void, in the sense of being legally non-existent. So to hold would be wholly unreal."

Al Mehdawi v. Secretary of State for the Home Department (1990 (1) R.C.876) was an interesting case. On the ground of overstaying in United Kingdom, the appellant was given a notice proposing to deport him. The appellant's solicitors lodged a notice of appeal and informed the appellants on his correct address, of the action taken by them. When the solicitors were notified of the date of hearing, they wrote to the appellant informing him of the date of hearing, but this letter was sent on the old address. The appellant did not receive it. The solicitors, finding no response from the appellants took no steps in the matter and the appeal was dismissed. The solicitors again wrote to the appellant but on the old address again. When sought to be deported, the appellant applied for judicial review of the deportation order on the ground of absence of notice; to him. The High Court and the Court of Appeal upheld his plea holding that notwithstanding absence of fault by the Tribunals there had been a breach of the principle of audi alteram partem, which constituted a fundamental flaw in the decision- making since the fault lay entirely with the appellant's solicitors there was a clear case for quashing the Tribunal's decision. On appeal to the House of Lords, the decision of High Court and Court of Appeal was reversed. The House of Lords [Lord Bridge] observed: "a party to the dispute who has last the opportunity to have his case heard through the default of his own advisers to whom he has entrusted the conduct of the dispute on his behalf cannot complain that he has been the victim of the procedural impropriety or that natural justice has been denied to him ......". In other words, the House of Lords was of the opinion that natural justice merely imposed standards of procedural fairness on the decision-making authority and that natural justice does not demand that the person affected should actually receive a fair hearing.

We must, however, make it clear that it may be

difficult to find uniformity in the large number of decided cases in United Kingdom. For example, take the decision of the House of Lords in Malloch v. Aberdeen Corporation [1971 (2) All.E.R.1278]. It was a case

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***This reminds us of what the Supreme Court of Canada said with respect to the meaning of the words "principles of fundamental justice". Section 7 of the Canadian Charter of Rights and Freedoms, 1982 declares "every one has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the Principles of fundamental justice" In R v. Beare [1988 (2) S.C.R.387], the Supreme Court of Canada while interpreting the words "principles of fundamental justice" said that it "guarantees fair procedure but does not guarantee the most favourable procedure that can possibly be imagined". Also see Grewal v. Canada [1992 (1) Canada Federal Court Reports 581.

where the concerned statute mandated that no resolution of a school Board far the dismissal of a certificated teacher was to be valid unless notice of the motion for dismissal was sent to the teacher not less than three weeks previous to the meeting. And, further that the resolution for the dismissal was not to be valid unless agreed to by the majority of the full members of the Board. The teacher concerned, Malloch, was informed more than three weeks in advance. But his written request for an opportunity to submit counter representations was not granted and though he was present at the decisive meeting, he was not permitted to state his case. The Court held that the statutory requirement of three weeks notice before the decision was taken, conferred an implied right to be heard. It was not done. By the notice dated March 19, 1969, the service off the teacher was terminated with effect from April 24, 1969. The House of Lords held that the concerned teacher was denied by the education authority, which employed him, the hearing to which he was entitled. It was further found that the hearing to be afforded would not be a useless formality, as there was an arguable case for the teacher. Nonetheless, it was observed by Lord Reid [at P.1283]:

> "..... it was argued that to have afforded a hearing to the appellant before dismissing him would have been a useless formality because whatever he might have said could have made no difference. If that could be clearly demonstrated it might be a good answer.

Lord Guest [at P.1291] not only agreed with the above statement but also applied the test of prejudice. He observed:

> "A great many arguments might have been put forward but forward but if none of them had any chance of success then I can see no good reason why the respondents should have given the appellant a hearing, nor can I see that he was prejudiced in any way. "

Lord Wilberforce too stated the principle in the following words [at P.1294]:

> "The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision

against him was taken. But to show this is not necessarily enough, unless he was also show that if admitted to state his case he had a case of substance to make . A breach of procedure, whether failure of natural justice, administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

In R.v. Secretary of state for Transport, ex parte Gwent County Council [1987 (1) All.E.R.161], the Court of Appeal too applied the test of prejudice in enhancement of toll charges over a bridge. The Act provided for a public hearing before effecting increase. Dealing with a complaint of procedural impropriety, the Court of Appeal held that unless. prejudice is established to have resulted from the procedural impropriety, no interference was called for. In another case, Bushell v. Secretary of State for Environment [1981 A.C.75 the House of Lords held that in the absence of statutory rules as to the conduct of a local enquiry under the Highways Acts 1959 the procedure to be followed was a matter of discretion for the Secretary of State and the Inspector - the only requirement being that the procedure followed should be fair to all concerned including the general public. It is thus clear that the approach of the Court depended upon the facts and circumstances of each case, the law applicables the nature of the right claimed by the person affected and so on. Having considered the principles emerging from the above cases, we are inclined to say that the aforesaid statement of law in Calvin v. Carr, stated with reference to Vasudevan Pillai, is the appropriate one to adopt as a general rule - and we are supported by the decisions of this Court in saying so. We must s however, forewarn that decisions on the applicability of the principles of possible nor necessary to refer to all of them, particularly in view of the recent Constitution Bench judgments. We will refer only to a few of them to explain our view point.

In State of Uttar Pradesh v. Mohd.Nooh (1958 S.C.R. 595] S.R.Das,CJ., speaking for the Constitution Bench, had this to say:

"If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may, we thinks quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to its it confirmed what ex-facie was

a nullity for reasons aforementioned."

In Janakinath Sarangi v. State of Orissa [1969 (3) S.C.C.392], Hidayatullah,CJ. [speaking for the Bench comprising himself and G.K.Mitter,J.] made the following pertinent observations:

"From this material it is aruged that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief among which are State of Bombay v. Narul Latif Khan (1965) 3 SCR 135; State of Uttar Pradesh & Another v. Sri C.S. Sharma (1967) 3 SCR 49. There is no doubt that if the principles of natural justice are violated and there is by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of particular right.....Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representation and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in his case by not examining the two retired Superintending Engineers whom he had cited or any one of them."

(Emphasis added)

Pausing here, we may notice two decisions of this Court where the test of prejudice was rejected, viz., Chintapalli Agency T.A.S.C.S. Limited v. Secretary (F&A) Government of Andhra Pradesh (1977 A.P. 2313) and S.L.Kapoor v. Jagmohan (1981 (1) 3.C.R.746) both rendered by three-Judge Benches. But if one notices the facts of those cases, it would be evident that they were cases of total absence of notice as in the case of Ridge v. Baldwin. In the former case, the Government allowed a revision filed under Section 77 of the Andhra Pradesh Cooperative Societies Act, 1964 without notice to opposite party, inspite of a request therefor. Para-9 brings out the factual position and Para-11 the legal proposition. They read thus:

"On the very day, viz., 6th October, 1976 when the respondents filed their revision before the

> Government, the appellant filed an application to the Government disputing the claim of the village societies. The appellant also filed before the Government on 28th October, 1976. On 5th November, 1976, the appellant prayed to the Government for an opportunity to file counter in the revision petition filed by the respondents. The Government, however, without any notice to the appellant, passed final orders on 4th December, 1976, allowing the two review petitions filed by the village societies and set aside the order of the Registrar dated 10th December, 1975.....
>
> The short question that arises for decision is whether the order of the Government in revision which was passed under section 77 of the Act is invalid for non-compliance with section 77(2) which provides that no order rejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation. It is submitted that the Government did not afford any opportunity to the appellant for making representation before it. The High Court rejected this plea on the ground that from a perusal of the voluntary application filed by the appellant it was clear that the appellant had anyhow met with the points urged by the respondents in their revision petition before the Government. We are, however, unable to accept the view of the High Court as correct."

Similarly, S.L.Kapoor's case was one where a Municipal Committee was superseded even without a notice to the committee, again a case like Ridge v. Baldwin. After referring to certain English and Indian decisions, Chinnappa Raddy ,J.made the following observation:

> "In our view the principle of natural justice know of justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had natural justice been observed. The non-observance of natural justice is itself prejudice to any man proof of prejudice independently of proof of denial of natural justice is unnecessary. It will comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under

> the law only one penalty is permissible, the Court may not issue its write to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Course do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgement under appeal."

The observations made in S. L . Kapoor have to be understood in the context of the facts of that case and, of course, subject to the dicta of the Constitution Bench referred to hereinafter.In Hiravath Misra v. Rajendra Medical College (1973) (1) S.C.C.805),the denial of opportunity to cross-examine the material witnesses was held not to vitiate the order made. It was a case where certain male students entered a girls' hostel during the night and misbehaved with the girls. The committee appointed to enquire into the matter recorded the statements of girls in camera and used them [on the question of identity of miscreants] against the appellants without allowing them to cross-examine the girls on the ground that such a course would reveal the identity of the girls and would expose them to further indignities and also because the enquiry was held by a committee of responsible persons.

In K.L. Triathi v. State Band of India & Ors. (1984 (1) S.C.C.43), Sabyasachi Mukharji, J., speaking for a three-Judge Bench, considered the question whether violation of each and very facet of principles of natural justice has the effect of vitiating the enquiry. The learned Judge observed:

> "The basic concept is fair play in action administrative, judicial or quasi judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified of given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross -examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

> The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.
>
> The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore, the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts."

It was accordingly held that the enquiry held and the punishment imposed cannot be said to have been vitiated on account of an opportunity to cross-examine certain witnesses not having been afforded to him.*

In Managing Director, E.C.I.L. V. B Karunkar [1993 (4) S.C.C.727], a Constitution Bench did take the view that before an employee is punished in a disciplinary enquiry, a copy of the enquiry report should be furnished to him (i.e., wherever an enquiry officer is appointed and he submits a report to the Disciplinary Authority). It was held that not furnishing the report amounts to denial of natural justice. At the same time, it was held that just because it is shown that a copy of the enquiry officer's report is not furnished, the punishment ought not be set aside as a matter of course. It was directed that in such cases, a copy af the report should be furnished to the delinquent officer and his comments obtained in that behalf and that the court should interfere with the punishment order only if it is satisfied that there has been a failure of justice. The

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*The very same test is applied by a three-Judge Bench in Sunil Kumar Banerjee v. State of West Bengal & Ors. (1980

(3) S.C.R.179).

> Liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry form the stage of furnishing him with the report
> ******
> (Emphasis added)

To the same effect is the decision of another Constitution Bench in C.B. Gautam v. Union of India & Ors. (1993 (1) S.C.C.78), a case arising under Chapter XX-C of the income Tax Act. At pages 110-111, the following observations are relevant:

> "This brings us to the question of relief. We find that the order of compulsory purchase under Section 269-UD(1) of the income Tax Act which was served on the petitioner in the night of December 15, 1986, has been made without any show-cause notice being served on the petitioner and without the petitioner or other affected parties having been given any opportunity to show cause against an order of compulsory purchase nor were the reasons for the said order set out in the order or communicated to the petitioner or other concerned parties with the order. In view of what we have stated earlier the order is clearly bad in law and is set aside."

Even so, this Court did not set aside the order of compulsory purchase but devised an appropriate procedure so that the "laudable object" underlying Chapter XX-C is not defeated and at the same time the persons affected get an opportunity to put forward their case against the

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***** The decision in State of Orissa v. Dr. Binapani Devi (1967(2) S.C.R.625), it is obvious, has to be read subject to this decision. following paragraph [applicable in cases where the order of punishment is subsequent to November 20, 1990, the date of judgment in Union of India v. Mohd. Ramzan Khan (1991(1) S.C.C. 588) is apposite:

> "Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate

findings and the punishment given the Court/Tribunal Should not interfere with the order of punishment. The Court/Tribunal should not interfere with the order of punishment the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or reversional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with proposed acquisition.

The decisions cited above make one thing clear, viz., principles of natural justice cannot be to reduced to any hard and fast formulae. As said in Russell c. Duke of Norfolk [1949 (1) All.E.R.109] way back in 1949, these principle cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. [See Mahender Singh Gill v. Chief Election commissioner (1978 (2) S.C.R.272)]. The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. [See A.K.Roy v. Union of India 1982 (1) S.C.C.271) and Swadeshi Cotton Mills v. Union (1981 (1) S.C.C.664)]. As pointed out by this Court in A.K.Kraipak L Ors. v. Union d India & Ors. (1969 (2) S.C.C.262), the dividing line between quasi-judicial function and administrative function [affecting the rights of a party] has become quite thin and almost indistinguishable a fact also emphasized by House of Lords in C.C.C.U. v. Civil Service Union [supra] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the Cases it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/no hearing may defeat the very proceeding - which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India (1984 (3) S.C.C.465).

There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate - take a case where the person is dismissed from service without hearing him altogether [as in Ridge v. Baldwin]. It would be a case falling under the first category and the order of dismissal would be invalid or void, if one chooses to use that expression [Calvin v.Carr]. But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report [Managing Director, E.C.I.L. v.B.Karunkar] or without affording him a due opportunity of cross-examining a witness [K.L.Tripathi] it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touch-stone of prejudice, i.e., whether, all in all, the person concerned did nor did not have a fair hearing. It would not be correct - in the light of The above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B.Karunkar should govern all cases where the complaint is not that there was no hearing [no notice, no opportunity and no hearing] but one of not affording a proper hearing [i.e., adequate or a full hearing] or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touch-stone of prejudice as aforesaid.

The matter can be looked at from the angle of justice or of natural justice also. The object of the principles of natural justice - which are now understood as synonymous with the obligation to provide a fair hearing***** - is to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing. The said objective can be tested with reference to sub-clause (iii) concerned herein. It says that copies of statements of witnesses should be furnished to the delinquent officer "not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority". Now take a case - not the one before us where the copies of statements are supplied only two

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*****See the discussion of this aspect at Page 515 of Wade: Administrative Law (Seventh Edition). In particular, he refers to the speech of Lord Scarman in C.C.S.U. v. Minister for the Civil Service [1985 A.C.374 at 407] where he used both these concepts as signifying the same thing.

days before the commencement of examination of witnesses

instead of three days. The delinquent officer does not object; he does not say that two days are not sufficient for him to prepare himself for cross-examining the witnesses. The enquiry is concluded and he is punished. Is the entire enquiry and the punishment awarded to be set aside on the only ground that instead of three days before, the statements were supplied only two days before the commencement of the examination of witnesses? It is suggested by the Appellate Court that sub-clause (iii) is mandatory since it uses the expression "shall". Merely because, word "shall" is used, it is not possible to agree that it is mandatory. We shall, however, assume it to be so for the purpose of this discussion. But then even a mandatory requirement can be waived by the person concerned if such mandatory provision is his interest a & not in public interest, vide Dhirendra Nath Gorai v. Sudhir Chandra Ghosh & Ors. (1964 (6) S.C.R.1001). Subba Rao,J., speaking for the Court, held:

> "Where the court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can obviously be waived. But a mandatory provision can obviously be waived. But a mandatory provision can only be waived if it is not conceived in the public interests, but in the interests of the party that waives it. In the present case the executing court had inherent jurisdiction to sell the property. We have assumed that s.35 of the Act is a mandatory provision. If so, the question is whether the said provision is conceived in the interests of the public or in the interests of the person affected by the non-observance of the provision. lt is true that many provisions of the Act were conceived in the interests of the public, but the same cannot be said of s.35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property than is necessary to discharge the debt is not sold. Many situations may be visualized when the judgment-debtor does not seek to take advantage of the benefit conferred on him under s.35 of the Act."

The principle of the above decision was applied by this Court in Krishan Lal State of Jammu & Kashmir [1994 (4) S.C.C.422) in the case of an express statutory provision governing a disciplinary enquiry. It was a case where the employee was dismissed without supplying him a copy of the enquiry officer's report as required by Section 17(5) of the Jammu and Kashmir (Government Servants) Prevention of Corruption Act, 1962. This was treated as mandatory. The question was how should the said complaint be dealt with. This Court held:

"Let it now be seen whether the requirement of giving copy of the proceeding of the inquiry mandated by Section 17(5) of the Act is one which is for the benefit of the individual concerned or serves a public purpose. If it be former, it is apparent, in view of the aforesaid legal position, that the same can be waived; if it be latter, it cannot be. Though Shri Mehta has urged that this requirement serves a public purpose, we do not agree. According to us, the requirement is for the benefit of the person concerned which is to enable him to know as to what had taken place during the cause of the proceedings so that he is better situated to show his cause as to why the proposed penalty should not be imposed. Such a requirement cannot be said to be relatable to public policy or one concerned with public interest, or to serve a public purpose.

We, therefore, hold that the requirement mentioned in Section 17(5) of the Act despite being mandatory is one which can be waived. If, however, the requirement has not been waived any act or action in violation of the same would be a nullity. In the present case as the appellant had far from waiving the benefit, asked for the copy of the proceeding despite which the same was not made available, it has to be held that the order of dismissal was invalid in law.

The aforesaid, however, is not sufficient to demand setting aside of the dismissal order in this proceeding itself because what has been stated in ECIL case [1993 (4) SCC 727] in this context would nonetheless apply. This is for the reason that violation of natural justice which was dealt with in that case, also renders an order invalid despite which the Constitution Bench did not concede that the order of dismissal passed without furnishing copy of the inquiry officer's report would be enough to set aside the order. Instead, it directed the matter to be examined as stated in paragraph 31.....

According to us, therefore, the legal and proper order to be passed in the present case also, despite a mandatory provision having been violated, is to require

the employer to furnish a copy of the proceeding and to call upon the High Court to decide thereafter as to whether non-furnishing of the copy prejudiced the appellant/petitioner and the same has made difference to the ultimate finding and punishment given. If this question would be answered in affirmative, the High Court would set aside the dismissal order by granting such consequential reliefs as deemed just and proper."

Sub-clause (iii) is, without a doubt, conceived in the interest of the delinquent officer and hence, The could waive it. From his conduct, the respondent must be deemed to have waived it. This is an aspect which must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries. It is trite to remember that, af a rule, all such procedure; rules are designed to afford a full and proper opportunity to the delinquent officer/employee to defend himself and are, therefore, conceived in his interest. Hence, whether mandatory or directory, they would normally be conceived in his interest only.

Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent

officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it mays the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on theground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could no be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing".

(a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule

[audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

Now, in which of the above principles does the violation of sub-clause (iii) concerned herein fall? In our opinion, it falls under Principles No.3 and 4(a) mentioned above. Though the copies of the statements of two witnesses [Kaur Singh, Patwari and Balwant Singh] were not furnished, the respondent was permitted to peruse them and take notes therefrom more than three days prior to their examination. Of the two witnesses, Balwant Singh was not examined and only Kaur Singh was examined. The respondent did not raise any objection during the enquiry that the non-furnishing of the copies of the statements is disabling him or has disabled him, as the case may be, from effectively cross-examining the witnesses or to defend himself. The Trial Court has not found that any prejudice has resulted from the said violation. The Appellate Court has no doubt said that it has prejudiced the respondent's case but except merely mentioning the same, it has not specified in what manner and in what sense was the respondent prejudiced in his defence. The High Court, of course, has not refereed to aspect of prejudice at all.

For the above reasons, we hold that no prejudice has resulted to the respondent on account of not furnishing him the copies of the statements of witnesses. We are satisfied that on account of the said violations it cannot he said that the respondent did not have a fair hearing or that the disciplinary enquiry against him was not a fair enquiry. Accordingly, we allow the appeal and set aside the judgment of the High Court affirming the judgments of the Trial Court and Appellate Court. the suit filed by the respondent shall stand dismissed.

No costs.

CASE 3 OF 35

Commissioner of Customs v. M/s Punjab Stainless Steel Industries

Court	Supreme Court of India
Bench	S.P. Bharucha, Y.K. Sabharwal and Brijesh Kumar, JJ.
Date	31.07.2001
Case no. / citation	Civil Appeal No. 7602 of 1999

Holding in brief

The Tribunal found a breach of natural justice in refusal of retesting of samples and non-supply of shipping bills. The Court held that the Commissioner had offered cross-examination of the Chemical Examiner, which was not availed, and that the test report had been supplied, so non-supply of the shipping bills was of no consequence.

Paragraphs highlighted

Unnumbered paragraphs on the offer of cross-examination, retesting and non-supply of shipping bills. Highlighted passages are on compendium pages 38-40.

Status

Final judgment; Revenue's appeal allowed with costs.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 38.

CASE NO.:
Appeal (civil) 7602 of 1999

PETITIONER:
COMMISSIONER OF CUSTOMS,

Vs.

RESPONDENT:
M/s.Punjab Stainless Steel Industries

DATE OF JUDGMENT: 31/07/2001

BENCH:
S.P. Bharucha, Y.K. Sabharwal & Brijesh Kumar

JUDGMENT:

Y.K.SABHARWAL, J.

The respondent, in discharge of its export obligation under quantity based advance licence, filed shipping bills for export of stainless steel utensils. One of the conditions of licence was that the utensils shall be made of AISI-202 quality stainless steel by using the raw material "non-magnetic stainless steel sheets/coils AISI-202 - indigenous" under proper declaration. The allegations against the respondent was that the goods exported under the export obligation were misdeclared inasmuch as the respondent had used the material of inferior grade to the one required in the manufacture of utensils. The Commissioner of Customs came to the conclusion that the charge against the respondent had been proved. The Commissioner for his conclusion relied upon the report of the Chemical Examiner. The demand of the respondent for retesting of samples was declined but in order to obviate any unfair treatment to the respondent, the Commissioner gave option to the respondent to cross-examine the Chemical Examiner who had tested the samples. The respondent, however, did not avail that option and declined to cross examine the Chemical Examiner. Regarding the objection of the respondent that copies of shipping bills were not supplied, the Commissioner observed that so long as report of the test conducted on the samples drawn from the respective consignments establishing that the grade of material used in the utensils exported under these consignments was substandard, was supplied to the respondent, it was immaterial whether copy of the shipping bills was supplied or not. After detailed examination of the record, the Commissioner held that the charge of mis-statement and suppressing the correct quality and grade of the input under claim of duty exemption entitlement under quantity based advance licence and DEEC Book in violation of the standard input-output and value addition norms mentioned therein stood established in respect of 67 out of 88 consignments. The Commissioner of Customs by order dated 3rd November, 1997 held that the goods amounting to Rs.6,74,43,408/- are liable to confiscation under Section 113(n) and (j) of the Customs Act, 1962 (for short, 'the Act'). Further, the bank guarantee of Rs.10,00,000/- was ordered to be appropriated against the liability of confiscation as the goods had already been exported. The respondent was also denied the benefit of the amount of Rs.4,68,78,932/- under DEEC Scheme and duty drawback in respect of these consignments directing that if these concessions have already availed by the respondent, the same shall be reversed. Further, a penalty of Rs.25,00,000/- was imposed on the respondent under Section 114 of the Act read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1962.

The order of the Commissioner was challenged by the respondent by preferring appeal before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal by the impugned order has set aside the order of the Commissioner of Customs. Under these circumstances, appeal under Section 130E of the Act has been filed by the Commissioner of Customs.

Shri Mohta, learned senior counsel appearing for the respondent has raised objection about the maintainability of the appeal contending that since the present case does not involve determination of any question having a relation to the rate of duty of customs or to the value of the goods for the assessment and, therefore, appeal under Section 130E of the Act is not competent. Learned counsel contends that if the appellant was aggrieved by the order of the Tribunal, it ought to have taken recourse to the remedy of reference as provided in Section 130 of the Act and further if aggrieved from the order made on reference, it could approach this Court by filing a petition under Article 136 for grant of leave. Learned Attorney General, without going into the question of maintainability, submits that the present appeal may be treated as a special leave petition and in support places reliance upon Commissioner of Central Excise & Customs v. Venus Castings (P) Ltd. [(2000) 4 SCC 206] where rejecting the similar objection about the maintainability of the appeals under the Central Excise Act, the appeals were directed to be converted into special leave petitions and dealt with on merits. In the circumstances of this case and also considering that this matter has been pending in this Court for nearly two years, we convert this appeal into special leave petition, grant leave and proceed to decide the appeal on merits.

The order of the Commissioner of Customs has been set aside by the Tribunal holding that there was violation of principles of natural justice on account of two reasons, namely, (1) Rejection of the request of the respondent for retesting the samples on the ground that there is no such provision in the Act and (2) Non-supply of the copy of the shipping bills.

Regarding the first reason, noticing the contention urged on behalf of the Revenue that there is no provision which permits retesting of samples, the Tribunal states that there is also no provision under the Customs Act which prohibits retesting of the samples, and accordingly holding that the denial of opportunity to retest the sample was violative of principles of natural justice. No specific provision has been brought to our notice which permits retesting of samples, but, for the present case, without going into that aspect, we would assume that there was no bar in granting opportunity to retest the samples. At the same time, however, it has to be borne in mind that the purpose of retesting the samples was to demolish the report of the Chemical Examiner on consideration whereof the charge of mis-statement and suppression regarding quality and grade of the input had been established against the respondent. In this regard, the Tribunal failed to notice the main aspect of the case that option was granted to the respondent to cross-examine the Chemical Examiner who after taking the samples had given the report. The respondent had, thus, ample opportunity to demolish his report. The respondent did not avail that opportunity. It stands established that the adjudicating officer had given an offer to the respondent to cross-examine the Chemical Examiner. The respondent did not dispute that such an offer was made. The only objection of the respondent was that such an offer was made suo moto and the respondent had not asked for it. The objection was frivolous and misconceived. Therefore, we fail to understand, how the respondent having failed to avail the opportunity to cross-examine the Chemical Examiner could urge that there was violation of principles of natural justice by non-grant of request of the respondent for retesting of the samples. Unfortunately, in the order of the Tribunal there is not even a whisper about the offer given to the respondent to cross-examine the Chemical Examiner. Thus, the first reason given by the Tribunal for coming to the conclusion that there has been violation of the principles of natural justice is not sustainable.

The second reason given by the Tribunal is also unsustainable as the

non-supply of copy of the shipping bills containing the examination report was of no consequence as admittedly the report of the test conducted on the samples drawn on the respective consignments establishing that the inferior material has been used had been supplied to the respondent. Under these circumstances the reasoning of the Commissioner of Customs could not be faulted. Therefore, the conclusion of the Tribunal that the order passed by the Commissioner of Customs was in violation of principles of natural justice is unsustainable.

The Tribunal also held that the demand in respect of consignments was time barred as the test report was received by the revenue 6 months before issue of show cause notice. In view of the finding that the charge of mis-statement and suppressing the correct quality has been established against the respondent, the demand cannot be held to be time barred. The conclusion of the Tribunal that the extended period of limitation is not available to the appellant is clearly erroneous. The reliance by the Tribunal on the order of Tribunal in the case of S.D. Kemexc Industries v. Collector of Central Excise, Calcutta [1995 (75) ELT 377] was also misplaced as in that case, the misdeclaration and suppression had not been established and, therefore, it was held that the demand was time barred. Clearly, therefore, the said decision had no applicability to the facts and circumstances of the present case.

For the aforesaid reasons we set aside the order of the Tribunal and restore the order of the Commissioner of Customs. The appeal is accordingly allowed with costs.

[S.P. Bharucha]

[Y.K.Sabharwal]

[Brijesh Kumar]

July 31, 2001

CASE 4 OF 35

Commissioner of Central Excise, Bangalore v. M/s Brindavan Beverages (P) Ltd. & Ors.

Court	Supreme Court of India
Bench	Dr. Arijit Pasayat and S.H. Kapadia, JJ.
Date	15.06.2007
Case no. / citation	Civil Appeal Nos. 3417-3425 of 2002 (with C.A. No. 4398 of 2003)

Holding in brief

The show cause notice is the foundation on which the Department must build its case. A notice with vague allegations, without details or specific facts against the noticee, shows that proper opportunity to meet the case was not given, and cannot support a demand.

Paragraphs highlighted

Paras 9 and 10. Highlighted passages are on compendium pages 44-45.

Status

Final judgment; Revenue's appeals dismissed.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 42.

CASE NO.:
Appeal (civil) 3417-3425 of 2002

PETITIONER:
Commissioner of Central Excise, Bangalore

RESPONDENT:
M/s Brindavan Beverages (P) Ltd. and Ors

DATE OF JUDGMENT: 15/06/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(With Civil Appeal No.4398 of 2003)

Dr. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal, Bangalore (in short the 'CEGAT'). By the impugned judgment appeals filed by the revenue against the common order of Commissioner of Central Excise, Bangalore (in short the 'Commissioner') was dismissed. The Commissioner had dropped the proceedings initiated vide a show cause notice dated 4.5.1995 relating to availability of exemption under Notification Nos. 175/86 and 1/93.

2. Background facts, as projected by the appellant are as follows:-

Vide the Show Cause notice, it was alleged that M/s Brindavan Beverages Pvt. Ltd., (hereinafter referred to as 'BBPL') who were engaged in the manufacture of aerated water and were the franchise holders to M/s. Parley Exports Ltd. (hereinafter referred to as PEL) in whose brand names they had manufactured goods viz., Limca, Thums Up, Gold Spot, had also manufactured aerated water in the name and style of Citra which was said to be brand name of M/s. Limca Flavours and Fragrances Ltd., (hereinafter referred to as 'LFFL'), a holding Company of M/s. PEL. They had also manufactured goods under the brand name of "Bisleri Club Soda" with the permission of M/s. Acqua Minerale (P) Ltd. (hereinafter referred to 'AMPL'] and they had availed and paid duty under exemption notification 175/86 and 1/93, for the said Citra and Bisleri Club Soda bottles, claiming that the brand name owners, were registered with the Directorate of Industries as a Small Scale Unit and, therefore, they were also eligible for exemption under the said Notifications.

On the basis of intelligence gathered that M/s Parley Exports Ltd., and Parley International Ltd., (hereinafter referred to as 'PEL and PIL' respectively] were under-valuing the concentrate and thereby evading central excise duty, investigations were caused to be made by Officers of Directorate General of Anti-evasions and the Central Excise Jurisdictional Officers.

Enquiries were caused and statements were recorded and pursuant to the said operations, according to Revenue, M/s BBPL availed the SSI exemption fraudulently in the conspiracy with AMPL and PEL by willfully making a mis-statement and suppressing correct facts and central excise duty amounting to Rs.39,51,028/- for the period from July 1993 to January 1994 was demandable by invoking the longer period of limitation provided under the Central Excise Act, 1944 (in short the 'Act'). It was also found that the Assistant Collector had passed an order permitting BBPL, SSI exemption on "Bisleri Club Soda" and "Citra". However, it was noticed that the facts disclosed in the enquiries conducted were not placed before the Assistant Collector in as much as the investigations conducted revealed that PEL are the owners of brand name such as "Bisleri" for club soda and "Citra" and LFFL was under- evaluating the goods to keep the turn-over below the exemption limits. It was also alleged that LFFL who own "Citra" brand were engaged in the manufacture of flavours in their factory at Ahmedabad had availed exemption of the SSI Notifications as amended and had permitted franchise of small users the "Citra" brand name on terms and conditions and consequently the franchise also started availing the SSI benefit which was not eligible as the investigations revealed that "Citra" was developed and launched by the R & D efforts of PEL and was got registered as a brand name of LFFL. It was alleged that they have deliberately fragmented the manufacture of flavours to avail the benefit. The Parle Group Management, centrally and commonly, controlled the production including all aspects thereof were managed and controlled by the executives of PEL. If the shelter of corporate veil was lifted and removed, then it was seen that for purposes of other taxes it was one, but for notifications under Central Excise, they were shown as separate persons. Therefore, the value of clearance of all excisable goods removed from PEL, PIL and LFFL were to be taken together to determine the eligibility of LFFL. The benefits which LFFL were availing of the SSI claimed by them were not available to them and since there was a deliberate fragmentation of manufacture to avail SSI exemption, the benefit of exemption on "Citra" was not eligible. Therefore, excise duty amounting to Rs.79,48,115/- for the period October 1990 to January 1994 in respect of "Citra" was demandable by invoking the longer period of limitation in view of the deliberate suppression of facts.

3. Noticees submitted their replies. On consideration of the submissions, proceedings initiated on the basis of the show cause notice dated 4.5.1995. Revenue preferred appeals before the CEGAT.

4. After considering the rival submissions, the CEGAT held that the order of the Commissioner dropping the proceedings did not suffer from any infirmity.

5. The CEGAT did not find any substance in this plea as there was no such brand name as "Bisleri Club Soda" which has been registered by the Trade Mark Authorities. What was registered for use under the Trade Marks Act is the word "Bisleri" for goods "soda" being aerated water and words "Bisleri for Bear and non-alcoholic beverages and syrups". The CEGAT found that no evidence was brought on record to indicate the words as used exist as a trade mark or any other marks belonging to another person who is not entitled to the benefits under the Notification.

6. In support of the appeals, learned counsel for the appellant submitted that the CEGAT has lost sight of the fact that there was necessity to lift the corporate veil and find out as to who was the real owner of the brand name. It was submitted that the supervision and the decision making power lay with somebody else and not the respondents.

7. Mr. A. Subba Rao, learned counsel for the appellant has submitted that respondent BBPL had the franchise of M/s Parley Exports Ltd. under whose brand name they had manufactured aerated water in the brand names of Limca, Thums Up and Gold Spot. Respondent had also manufactured aerated water in the name and style of Citra said to be the brand name of M/s. Limca Flavours and Fragrances Ltd., a holding company of PEL in which 50% shares are held each by Shri Ramesh J. Chauhan and Shri Prakash J Chauhan both of whom happened to be brothers. Additionally, the respondents also manufactured goods under the brand name of "Bisleri Club Soda" with the permission of M/s Acqua Minerals (P) Ltd., New Delhi. With reference to the various positions and as Directors in LFFL, PEL, AMPL, PIL, Apex Traders, M/s Coolade Beverages (P) Ltd. And M/s Delhi Bottling Co. Ltd. it is submitted that either Shri Ramesh J Chauhan or Prakash J Chauhan or persons related to him or being members of the Board of Directors of various companies had right to create facet to avail the benefits under the Notification in question. Since these concerns could not have availed the benefits they have created dummy concerns to avail the benefits. It is submitted that in the circumstances there was necessity to lift the corporate veil to find out the true owners.

8. Per contra, learned counsel for the respondents submitted that there is no material that the respondents had ever been parties to the so called arrangement, even if it is accepted for the sake of arguments but not conceded, that such arrangement was in reality made. There was no material brought on record to show that the respondents had any role to play in such matters as alleged. Even the show cause notice did not refer to any particular material to come to such a conclusion. Therefore, the Commissioner and the CEGAT were justified in holding that the respondents were entitled to the benefits.

9. We find that in the show cause notice there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise holder. On a perusal of the show cause notice the stand of the respondents clearly gets established.

10. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the

arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted.

11. Therefore, on the facts noticed by the Commissioner and the CEGAT, there is no scope for interference in these appeals which are accordingly dismissed. There will be no order as to costs.

JUDIS

CASE 5 OF 35

Commissioner of Central Excise, Nagpur v. M/s Ballarpur Industries Ltd.

Court	Supreme Court of India
Bench	S.H. Kapadia and B. Sudershan Reddy, JJ.
Date	30.08.2007
Case no. / citation	Civil Appeal No. 1373 of 2002

Holding in brief

In a matter of evasion the show cause notice is the foundation of the demand. A provision (Rule 7 of the Valuation Rules) not invoked in the notice cannot be invoked later by the Commissioner. The first notice was set aside as time-barred; the other two were remitted.

Paragraphs highlighted

Paras 8, 21 and 22. Highlighted passages are on compendium pages 48, 53.

Status

Final judgment; Revenue's appeal partly allowed.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 47.

CASE NO.:
Appeal (civil) 1373 of 2002

PETITIONER:
Commissioner of Central Excise, Nagpur

RESPONDENT:
M/s Ballarpur Industries Ltd

DATE OF JUDGMENT: 30/08/2007

BENCH:
S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

KAPADIA, J.

This civil appeal is filed by the Department under Section 35L(b) of the Central Excise Act, 1944 against the judgment dated 20.7.2001 delivered by the Customs, Excise and Gold (Control) Appellate Tribunal ("CEGAT") in Appeal No. E/1758/2000.

2. The issue which arises in this civil appeal is as to whether in the absence of any "sale", rule 57CC of the Central Excise Rules, 1944 would have any application or not. The contention of the assessee is that in the case of "stock transfer" there is no "sale" and, therefore, rule 57CC was not applicable. This contention has been accepted by the Tribunal, hence this civil appeal.

3. The assessee is engaged in manufacture of paper falling under Chapter 48 of the Central Excise Tariff. The assessee is availing the benefit of MODVAT Scheme under Rule 57A of the Central Excise Rules, 1944 (for short, "1944 Rules"). The assessee is also manufacturing pulp falling under Chapter 47 of the Central Excise Tariff, which is chargeable to nil rate of duty. The said pulp is captively consumed for the manufacture of paper. According to the assessee, a small portion of the pulp is sent to the sister unit of the assessee at Asthi. According to the assessee, there was no sale of pulp as alleged by the Department. According to the assessee, a small quantity of pulp manufactured by the assessee was stock transferred to its sister unit at Asthi.

4. In this civil appeal, we are concerned with the period September, 1996 to March, 1999. During this period, the assessee had transferred approximately 41000 MT of pulp to its sister unit and had paid duty at the rate of eight per cent of the cost price declared by them.

5. Three show cause notices were issued by the Department dated 21.5.1999, 30.9.1999 and 18.11.1999 in which it was alleged that if comparable prices obtained by the sister units are taken into consideration then the total duty payable at the rate of eight per cent would work out to Rs. 4.58 lacs (approx.) whereas the assessee had paid duty of Rs. 2.67 lacs (approx.). Therefore, it was alleged that the assessee had evaded payment of duty to the tune of Rs. 1.90 lacs (approx.) and accordingly they were also liable to pay penalty under Rule 57-I(4) read with Rule 173C of the 1944 Rules.

6. Vide reply dated 25.6.1999, the assessee contended that there was no sale of pulp, that it was the case of stock transfer of pulp which was consumed as raw-material in the manufacture of paper by the sister unit of the assessee. According to the assessee, a major portion of the pulp manufactured by it was consumed by the assessee and a very small percentage was stock transferred to the sister unit, which consumed the

transferred pulp in the manufacture of paper. According to the assessee, in their reply to show cause notices, price declarations were filed for clearance of pulp to their sister unit at Asthi by way of stock transfer and, therefore, they adopted the rate of 8 per cent of the cost price for purposes of reversal of credit on inputs on which credit was taken. In this connection, the assessee applied rule 6(b)(ii) of the Central Excise (Valuation) Rules, 1975 (for short, "Valuation Rules 1975"). According to the Department, the assessee should have taken into account 8 per cent of the selling price of pulp sold by the assessee's sister units in other states for reversal of MODVAT credit on inputs on which credit was taken by applying rule 6(b)(i) of the Valuation Rules 1975. If rule 6(b)(i) was to apply then considering the sale price of pulp cleared in other states, the duty amount payable by the assessee herein, worked out to Rs.4,57,56,812/- whereas assessee had paid an amount of Rs.2,67,32,851.

7. At this stage, it may be clarified that, in this case, three show cause notices were issued; the first was dated 21.5.1999, which related to the period September, 1996 to March, 1999, second show cause notice was dated 30.9.1999, which related to the period April, 1999 to June, 1999, and the third show cause notice was dated 18.11.1999, which related to the period July, 1999 to September, 1999. This difference is required to be kept in mind because under the first show cause notice dated 21.5.1999, the Department has invoked the extended period of limitation, whereas the second and the third show cause notices dated 30.9.1999 and 18.11.1999 were for the periods April, 1999 to June, 1999 and July, 1999 to September, 1999 respectively, which were within limitation.

8. Value is the function of price. In every case in which there is an allegation of evasion, a show cause notice constitutes the foundation on which the demand made by the Department could stand or fall. Rule 57CC deals with adjustment of credit on inputs used in the manufacture of exempted final products. It applies in cases where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as any other final product which is exempted from payment of duty or chargeable to nil rate of duty and the manufacturer takes credit of the specified duty on any inputs, which is used in manufacture of both the above categories of final products. In such a case, the manufacturer is required to pay a presumptive amount equal to eight per cent of the price of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

9. For the purpose of deciding this matter, we quote hereinbelow sub-rules (1), (7), (8) and (9) of rule 57CC of the Central Excise Rules, 1944:

"Rule 57CC. Adjustment of credit on inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer.- (1) Where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as in any other final product which is exempt from the whole of the duty of excise leviable there on or is chargeable to nil rate of duty and the manufacturer takes credit of the specified duty on any inputs (other than inputs used as fuel) which is used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final products or not, the manufacturer shall, unless the provisions of sub-rule (9) are complied with, pay an amount equal to eight per cent of the price (excluding sales tax and other taxes, if any, payable on such goods) of the second category of final products charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

xxx

(7) The provisions of sub-rule (1) shall apply even if the inputs on which credit has been taken are not actually used or contained in any particular clearance of final products.

(8) If any goods are not sold by the manufacturer at the factory gate but are sold from a depot or from the premises of a consignment agent or from any other premises, the price (excluding sales tax and other taxes, if any, payable) at which such goods are ordinarily sold by the manufacturer from such depot or from the premises of a consignment agent or from any other premises shall be deemed to be the price for the purpose of sub-rule (1).

(9) In respect of inputs (other than inputs used as fuel) which are used in or in relation to the manufacture of any goods, which are exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty, the manufacturer shall maintain separate inventory and accounts of the receipt and use of inputs for the aforesaid purpose and shall not take credit of the specified duty paid on such inputs." (emphasis supplied)

10. For the sake of convenience, we also quote hereinbelow Section 4(1) and (2) of the Central Excise Act, 1944 (for short, "1944 Act") as it stood at the relevant time:
"Section 4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value, shall, subject to the other provisions of this section, be deemed to be \026

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal where the buyer is not a related person and the price is the sole consideration for the sale :

Provided that \026

(i) where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

(1a) Where the price at which such goods are ordinarily sold by the assessee is different for different places of removal, each such price shall, subject to the existence of other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such place of removal.

(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at

the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons), who sell such goods in retail;

(b) where the normal price of such goods is not ascertainable for the reason, that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price."

11. We also quote hereinbelow Instructions issued by the Central Board of Excise and Customs based on Circular No. B-42/1/96-TRU; dated 27.9.1996 (1996 (88) ELT T5):
"Modvat \026 Reversal of credit for inputs used in the manufacture of exempted product

Kind attention is invited to the provisions of Rule 57CC of the Central Excise Rules for reversal of Modvat credit in respect of inputs used in the manufacture of exempted goods or goods chargeable to 'nil' rate of excise duty. The provision has been made that where a manufacture uses inputs which are common to both dutiable goods as well as exempted goods, the manufacturer is required to debit the amount equal to 8% of the value of the exempted goods when they are cleared from the factory.

2. In some cases, the exempted goods cleared by one manufacturer are used as inputs by another manufacturer. The manufacture of exempted goods indicates the amount of Modvat credit reversed on the invoices issued by him for such exempted goods. In this context, some doubts have been raised whether the amount of Modvat credit so reversed is available as Modvat credit to the

user of such exempted goods when he uses them as inputs in his factory.

3. In this context, it is clarified that the amount reversed is not by way of payment of excise duty. Accordingly, the amount of Modvat credit reversed and shown in the invoice by the manufacturer of exempted goods cannot be taken as credit by the user of exempted goods."
(emphasis supplied)

12. Rule 57CC was placed on statute book by Notification No. 14/96-CE dated 23.7.1996. It was issued under Section 37 of the 1944 Act. Sub-rule (1) refers to a manufacturer who manufactures excisable goods which are chargeable to duty as well as goods which are exempt or which are chargeable to nil rate of duty. If the said manufacturer takes credit on inputs, as in the present case, which he ordinarily uses in the manufacture of both exempt as well as dutiable final products, he was required to comply with the conditions mentioned in sub-rule (9). Otherwise, upon removal of final product, which was exempt from payment of duty, he was required to pay a presumptive amount equal to 8 per cent of the price charged by him on the exempted final products at the time of clearance. Sub-rule (2) provided that presumptive amount of 8 per cent was payable either by debit in RG 23A Part II register or by debit in PLA. Sub-rule (8) provided that if the exempted goods were not sold at the factory gate, the price at which such goods were sold at the manufacturer's depot or from the premises of the consignment agent or any other premises, shall be deemed to be the price for the purpose of sub-rule (1). Therefore, sub-rule (8) was also based on the concept of "deemed price". Sub-rule (9) provided that in respect of common inputs, the manufacturer shall maintain separate inventory and accounts of the use of inputs used in the manufacture of exempted products and shall not take credit of duty on such specified inputs. As stated above, if the manufacturer opts not to maintain separate accounts under sub-rule (9) then upon removal of final product which is exempt from payment of duty, he would be required to pay a notional sum equal to 8 per cent of the price charged by him on the exempted final products at the time of clearance. Lastly, sub-rule (7) provided that sub-rule (1) would be attracted even if inputs on which credit has been taken, are not actually used. However, the said sub-rule (7) must be read with the phrase "which goods are ordinarily used in the manufacture of exempted final products and dutiable final products" mentioned in sub-rule (1). If read together, it becomes evident that in order to apply sub-rule (7), the Department had to establish that common inputs were ordinarily used for both the categories of final products.

13. The object of the rule 57CC(1) was to recover a presumptive sum upon removal of exempted goods from a manufacturer who also manufactured dutiable goods, but using common input for both dutiable as well as duty exempted goods and who took MODVAT credit on such common inputs. Rule 57CC sought, therefore, to recover a presumptive sum equal to eight per cent of the price of exempted goods at the time of their removal where the manufacturer did not undertake maintenance of inventory/accounts of the clearance of exempted final products. Even sub-rule (7) of rule 57CC was based on "deemed price" if read with rule 57CC(1). Sub-rule (7) read with sub-rule (1) prevented an assessee from contending that he was not liable to pay the presumptive sum of eight per cent of the price of exempted goods on the ground that the said exempted goods were wholly manufactured out of inputs on which no credit of duty had been taken under rule 57A. The amount required to be paid at the time of removal of exempted goods under rule 57CC(1) had to be done in the same manner as was the case with any other excisable goods as the rate of duty stood determined at the rate of eight per cent in the rule itself. The said presumptive amount was required to be paid by debiting in PLA register or by payment in cash. As stated above, there was an alternative provided under sub-rule (9) which relieved the manufacturer of the liability to pay eight per cent of the price of exempted goods at the time of removal of such

goods. Under sub-rule (9), the assessee was required to maintain a separate account and an inventory and that he was not entitled to take credit on the inputs meant for use in exempted final product. If such accounts and inventory were maintained, there was no need to pay a presumptive amount equal to eight per cent of the price of exempted goods at the time of their removal.

14. In our view, rule 57CC, therefore, required payment of a presumptive amount of eight per cent of the price of the exempted goods, net of sales tax and other taxes. This rule was self contained provision indicating the basis on which price had to be determined. The rule, however, has not called the said amount of eight per cent as duty of excise. As indicated in the above circular, quoted above, the manufacturer who did not maintain account or inventory was required to debit the amount equal to 8 per cent of the value of exempted goods at the time of removal of goods from the factory. In our view, the said amount of 8 per cent of the value of the goods at the time of clearance is the measure and it brings in also the applicability of section 4 of the 1944 Act and the Valuation Rules 1975 framed thereunder.

15. Under Section 4(1)(a) normal price was the basis of the assessable value. It was the price at which goods were ordinarily sold by the assessee to the buyer in the course of wholesale trade. Under Section 4(1)(b) it was provided that if the price was not ascertainable for the reason that such goods were not sold or for any other reason, the nearest equivalent thereof had to be determined in terms of the Valuation Rules, 1975. Therefore, rule 57CC has to be read in the context of Section 4(1) of the 1944 Act, as it stood at the relevant time. Section 4(1)(a) equated "value" to the "normal price" which in turn referred to goods being ordinarily sold in the course of wholesale trade. In other words, normal price, which in turn referred to goods being ordinarily sold in the course of wholesale trade at the time of removal, constituted the basis of the assessable value. Rule 57CC(1) proceeds on the basis that the manufacturer has taken credit of the specified duty on "common inputs" which needs to be reversed at eight per cent (i.e. the manufacturer needs to debit an amount equal to eight per cent of the price of the exempted final product charged for the sale of such goods. This amount is a presumptive sum calculated at eight per cent of the price charged. The rate of eight per cent is the measure to calculate the presumptive sum. Further, reading rule 57CC(1) with rule 57CC(8) one finds that entire rule is based on "deemed price" and "recovery of presumptive amount" and, therefore, in our view, the words "price charged at the time of sale" must be read as "eight per cent of the value of the exempted goods". Our interpretation stands supported by the Instructions issued by the Central Board of Excise and Customs based on the circular No. B-42/1/96-TRU dated 27.9.1996. This is where section 4 and the Valuation Rules, 1975 come into play. In the light of the above discussion, the adjudicating authority was required to adjudicate upon applicability of rule 6(b)(i) and rule 6(b)(ii). However, it has been held by the adjudicating authority that rule 6(b)(i) is not applicable, hence, in our view the only issue which remains to be decided is whether all the requisite elements of costing like wages, profits etc. have been taken into account by the assessee herein as required under rule 6(b)(ii).

16. In the case of Union of India and ors. v. Bombay Tyre International Ltd. AIR 1984 SC 420 this Court had drawn a distinction between the nature of levy and the measure/yardstick on which the tax (duty) is determined.

17. In the circumstances, rule 57CC is a provision which seeks to recover presumptive amount at the rate of eight per cent of the price of exempted final product at the time of removal for sale. In the circumstances, the Tribunal erred in holding that Rule 57CC is not applicable to the present case as it involves stock transfer and not a sale. If the view of the Tribunal is to be accepted, then neither Section 4 of the 1944 Act nor the Valuation Rules, 1975 framed thereunder could apply. If the nature of the presumptive sum is kept in mind then there will be no conflict between our view and the

view expressed by the Central Board of Excise and Customs vide Instructions based on circular No. B-42/1/96-TRU; dated 27.9.1996. We have enunciated the above principles concerning rule 57CC on account of the total confusion both in the industry as well as in the Department.

18. In the case of M/s Continental Foundation Joint Venture Sholding v. CCE, Chandigarh-I (Civil Appeal No. 3139/2002 etc.) a show cause notice under Section 11A of the 1944 Act was issued to the assessee invoking extended period of limitation on the grounds of suppression, fraud and collusion. The Division Bench of this Court, to which one of us, Kapadia, J., was the member, held that where various circulars, instructions/directions stood issued at different points of time and where there was no clarity in the views expressed by the authorities, extended period of limitation cannot be invoked. It was held that the word "suppression" in Section 11A of the 1944 Act is accompanied by the words "fraud" or "collusion" and, therefore, the word "suppression" should be construed strictly. That, mere omission to give correct information did not constitute suppression unless that omission was made willfully in order to evade duty. That, suppression would mean failure to disclose full and true information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party would not constitute suppression. That, an incorrect statement cannot be equated with a willful mis-statement. The latter implies making of an incorrect statement with the knowledge that the statement made was not correct.

19. Applying the above tests to the facts of the present case, we hold that the Department was not entitled to invoke the extended period of limitation vide the first show cause notice dated 21.5.99. However, the second and third show cause notices dated 30.9.1999 for the period April, 1999 to June, 1999 and 18.11.1999 for the period July, 1999 to September, 1999 respectively are within time. Therefore, we strike down only the first show cause notice dated 21.5.1999. However, we hereby set aside the impugned judgment of the Tribunal which has held that rule 57CC of the 1944 Rules is not applicable to this case as there was no "sale". In cases where the manufacturer does not comply with rule 57CC(9), he shall debit the presumptive sum equal to eight per cent of the value of the exempted goods at the time of clearance from the factory gate. This rule would apply to stock transfers also.

20. In the light of our aforestated interpretation of rule 57CC of the 1944 Rules, we set aside the impugned judgment of the CEGAT and remit the aforesaid second and third show cause notices to the Commissioner of Central Excise, who will decide the question of applicability of rule 6(b)(i) and rule 6(b)(ii) of the Valuation Rules 1975 in accordance with law.

21. Before concluding, we may mention that, in the present case, the second and the third show cause notices are alone remitted. The first show cause notice dated 21.5.1999 is set aside as time barred. However, it is made clear that Rule 7 of the Valuation Rules 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule.

22. Accordingly, the civil appeal filed by the Department is partly allowed and the second and the third show cause notices dated 30.9.1999 and 18.11.1999 respectively are remitted to the Commissioner for determination in accordance with the principles laid down hereinabove. The civil appeal filed by the Department stands partly allowed with no order as to costs.

CASE 6 OF 35

Basudev Garg v. Commissioner of Customs

Court	High Court of Delhi
Bench	Badar Durrez Ahmed and R.V. Easwar, JJ.
Date	12.04.2013
Case no. / citation	2013:DHC:1877-DB; CUS.A.A. 7/2010 (with 10, 12 and 13 of 2010)

Holding in brief

When a statement is used against the assessee, the assessee must be given the opportunity to cross-examine its maker; section 138B Customs Act (like section 9D Central Excise Act) is to be applied with these safeguards. The Tribunal had not considered section 138B or the non-supply of a report received after the hearing, and the matters were remitted.

Paragraphs highlighted

Paras 10, 14, 15 and 16. Highlighted passages are on compendium pages 67, 70-72.

Status

Final order; matters remitted to the Tribunal.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 55.

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.04.2013

+ CUS.A.A. 7/2010

BASUDEV GARG ... Appellant

versus

COMMISSIONER OF CUSTOMS ... Respondents

AND

+ CUS.A.A. 10/2010 & CM No. 21740/2010

ARUN GUPTA ... Appellant

versus

COMMISSIONER OF CUSTOMS ... Respondents

AND

+ CUS.A.A. 12/2010 & CM No. 21751/2010

ANIL GOEL ... Appellant

versus

COMMISSIONER OF CUSTOMS ... Respondents

AND

+ CUS.A.A. 13/2010 & CM No. 21754/2010

ANIL GOEL ... Appellant

versus

COMMISSIONER OF CUSTOMS ... Respondents

Advocates who appeared in this case:
For the Appellants : Mr C.Hari Shankar and Sh. S.Sunil.
For the Respondent : Mr.Kamal Nijhawan, Senior Standing Counsel with Mr.Sumit Gaur, Advocate.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V. EASWAR

JUDGMENT

BADAR DURREZ AHMED, J

1. These appeals are directed against the order dated 15th March, 2010 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi. In all these appeals, the common issue that has been sought to be raised by the appellants is that the appellants have made a request of cross-examination of the persons whose statements have been referred to in the show-cause notice dated 30th April, 2004 as also relied upon by the Commissioner in the Order-in-Original dated 30th November, 2005 as also by the Tribunal in its order dated 15th March, 2010 but that request has not been acceded to. The result being that the appellants have been deprived of their right to cross-examine the makers of the statements. Therefore, there has been a violation of the principles of natural justice. Furthermore, it is contended that the statements, unless the exceptions carved out in Section 138 (B) of the Customs, 1962 are clearly made out, cannot be regarded as

being relevant and therefore cannot form the basis of proving the truth of the facts contained in the statements.

2. In all these appeals except CUSAA No. 7/2010, an additional issue has also raised and that is with regard to the non-supply of the enquiry report conducted after the conclusion of hearing by the Srilankan authorities. Before we address these issues, it would be necessary to set out some facts.

3. The principle allegation against the appellants is that they imported Ball Bearings of Chinese origin but showed by them as having been imported from Srilanka in order to evade anti-dumping duty. Show-cause notices were issued to the appellants on 30th April, 2004. Those show-cause notices contained references to several statements of various individuals. In the case of the appellant, Sh.Anil Goel, there is a list of the statements which had been referred to and relied upon in the show-cause notice and that appears in para 5 of the reply to the show-cause notice dated 05.06.2004. The said para reads as under:-

> "5. The above allegations against our client, Sh. Anil Goel are based on the testimony of the following witnesses recorded under Section 108 of the Customs Act, 1962 or certain documents obtained by DRI, during the investigation.

1. Statement of Sh. Ashok Pathak (Para 2 of SCN)
2. Statement of Shri. Dalbir Singh (Para 4 of SCN)
3. Statement of Shri. Sureshkumar, Driver of M.K. Transports (Para 5 of SCN).
4. Statement of Shri. Jaipal Singh, owner of the shop. (Para 7 of SCN).
5. Statement of Sh. Mukesh Kumar Gupta (Para 13 : 14/11/03 of SCN).
6. Statement of Shri. H.L. Arora (Para 15 if SCN).
7. Statement of Shri. Raj Kumar Parcha (Page 16 of SCN).
8. Statement of Shri. Ravinder Uniyal (Para 19 of SCN).
9. Statement of Shri. Dinesh Kumar, Driver (Para 20 of SCN).
10. Statement of Shri. Dalbir Singh, Driver (Para 21 of SCN).
11. Statement of Shri. Gulab Singh, Driver (Para 23 of SCN).
12. Statement of Shri. Gulab Singh, Driver (Para 23 if SCN).
13. Statement of Shri. Basant Sharma, owner of the truch (Para 24 of SCN).
14. Statement of Shri. Tutul Mondal, Driver (Para 25 of SCN).
15. Statement of Shri. Gautam Chatterjee (Para 26 of SCN).
16. Statement of Shri. Yusuf Khan, Driver (Para 27 of SCN).
17. Statement of Shri. Gajender Singh Uniyal (Para 28 of SCN).
18. Reference to DRI, Chennai letter dt. 14.11.2003 (Para 29 of SCN).
19. Statement of Shri. Mohan Lal Thapar (Para 31 of SCN).

20. Letter dt. 3.2.04 of Shri. Suresh Pal Gupta of Dubai (Para 32 of SCN).
21. Statement of Shri. Dilip F. Mehta (Para 34 of SCN).
22. Statement of Shri. Kamlesh Jain, Chennai (Para 37 of SCN).
23. Enquiries with Dept. of Commerce, DRI, Chennai (Para 37 of SCN).
24. Letter dated 8.03.04 from Asma Noor, Executive Secretary (Para 39 of SCN).
25. Statement of Shri. Kapur Chand (Para 40 of SCN)."

4. From the above, it is apparent that 21 statements of different individuals have been referred to in the show-cause notice. It is also clear from paragraph 6 of the very same reply dated 05.06.2004 to the show-cause notice that a request for summoning the persons who made those statements were clearly made. Paragraph 6 of the said reply reads as under:-

> "6. From the above narration and evidence relied upon in the Show Cause Notice it would be seen that the entire case is built on the basis of statements of certain witnesses and the report sent by DRI, Chennai on the basis of enquiries conducted by Central Intelligence Unit of Sri Lankan Customs. Therefore, Your Honour is requested to summon all the above referred witnesses including the Customs Officers of Sri Lanka who have verified the premises in Sri Lanka and have done enquiries without recording statements of the landlord. If any report including final report in writing has been sent by Sri Lankan

> Customs, copy of the same may be made available as the same is relied upon in DRI, Chennai's letter dated 14.11.2003. However, in the interest of justice our client would like to have entire communication received from Sri Lankan Customs."

5. It has further been pointed out that the request for summoning the witnesses has been noted in the Order-in-Original dated 30.11.2005 itself. This is apparent from paragraph 50 of the Order-in-Original which clearly reveals that there was a request to summon all the persons who allegedly made these statements including the Custom Officers of Srilanka for cross-examination. The Order-in-Original, in paragraph 61 records that the request for cross-examination of witnesses and DRI Officers was denied. This would be apparent from paragraph 61 which is re-produced herein below:-

> "(61) The request of noticees namely S/Shri. Anil Goel, Suresh Pal Gupta, Gagan Thapar and Mukesh Kumar Gupta for cross-examination of witnesses and DRI officers was denied and the date of personal hearing was fixed for 14.10.2004. All the notices were informed about the date of personal hearing accordingly, Shri. Gagan Thapar vide letter dated 15.10.2004 was informed that his request for cross examination of witnesses was not accepted by the Competent Authority. He was also directed to submit the reply to the show cause notice within 15 days, however, no reply was submitted by him."

6. Furthermore, the right to cross-examine had been denied by the Commissioner of Customs on the understanding that no right of cross-examination of witnesses and Officers of Customs exists in the noticees in the course of adjudication proceedings. This contention is recorded in paragraph 67 of the Order-in-Original.

7. The appellants were aggrieved by the Order-in-Original dated 30.11.2005 and, therefore, they preferred appeals before the Tribunal. In the said appeals, specific points with regard to denial of opportunity of cross-examination were also taken. However, the Tribunal by virtue of the impugned order dated 15.03.2010 brushed aside the said point in the following manner:-

> "64. Overseas enquiry was not challenged to be motivated. Result of enquiry remained uncontradicted except bald plea of denial of cross examination when the goods recovered by search operation proved motive of appellants as well as their ill will and part of goods smuggled was proved to be without proof of import. The case of mis-declaration was proved beyond doubt by cogent evidence gathered by Investigation. Natural justice did not appear to have been violated when cogent evidence brought out by Investigation left no doubt about involvement of the group promoting smuggling through various conduits. The appellants lead their defence and their case was in entirety considered by the learned Adjudicating Authority considering their reply to

show cause notice. When the Investigation in Sri Lanka by the Intelligence Authority of that country supported the case of Investigation in India, credibility of evidence gathered by Investigation remained undoubted. Evidence act not being applicable to quasi judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. Nothing was repelled by them to show that "KG: brand ball bearings were not of Chinese origin. They failed miserably to prove their bonafide. The import documents mis-declared the imported goods to be of Sri Lankan origin. The duty free exemption scheme available to goods manufactured in Sri Lanka was abused by appellants and customs duty was evaded on the Ball Bearings imported. Abuse of Notification benefit granting exemption to goods manufactured in Sri Lanka was proved by Investigation.

65. xxxxx xxxxx xxxxx

66. Principal grievance of the learned counsel Sri. Pradeep Jain was violation of principles of natural justice. That did not weigh consideration when material on record suggested that oral evidence recorded in the course of investigation were neither recorded under whims and fancies nor caprice. Allegations were properly brought out by show cause notice bringing the modus operandi for leading defence. None of the evidence was

> gathered behind back of the appellants. The report from Sri Lankan Customs was a follow up of the Investigation itself. The outcome of Investigation was exposed in the Show Cause Notice bringing out the chain of smuggling activities. Appellants failed to rule out questionable role of each othe, but contributed to the promotion of smuggling. None of the evidence gathered by Investigation were liable to be discarded merely because those gave rise to adverse consequence against the appellants, in view of their credence and trustworthiness as well as reasonability. Entire argument of revenue on the point of law relating to cross examination and nature of evidence as well as concealed nature of smuggling activities were forceful. Therefore, there is no scope to hold that the adjudication proceedings suffered from violation of natural justice when the unfair deal of appellant surfaced. Accordingly the citations made by the appellants in the course of hearing were misplaced by them who failed malafide of Investigation of the Investigation by any means was liable to be vitiated."

8. Another point which was raised in some of these appeals was that the show-cause notices were issued on 30.04.2004 and the Noticees were supposed to respond to the show-cause notice on the basis of the material available with the Noticees on that date. Even hearing in the matter was concluded on 14.10.2004. Yet, the Commissioner of Customs placed reliance on the subsequent report dated 20.07.2005 which was based on an investigation/enquiry conducted after the conclusion of the hearing on 14.10.2004. That report/documents pertaining thereto had not been

supplied to the appellant in order to ascertain the response to the same. It was submitted that in the absence of the said report and documents, the appellants had been denied the valuable right to answer to and meet the points raised in the report/documents. The fact that the report, subsequent to the hearing on 14.10.2004 was considered is clear from the following extract of paragraph 70 (iv) of the Order-in-Original.

> (70)(iv) Similarly, as regards imports of bearings by M/s Maya Trading Co. and Devsons, it has been submitted by Shri Anil Goel that he is not concerned with these imports. However, he seems to make all efforts to establish the bonafide of the imports Made by M/s Maya Trading Co. and Devsons. It has been submitted by him in written brief
> submitted at the time of personal hearing on 14.10.2004 that the matter of authenticity of Country of Origin Certificates filed by M/s Maya Trading Co. and Devsons for clearance of goods at ICD Patpargani, was taken up
> by his advocate with the Board of Investment, Sri Lanka vide letter dated 10.05.2004 and it has been confirmed by the Department of Commerce , Sri Lanka vide letter dated 28.07.2004 that the certificate of origins referred to in Advocate's letter were issued by the Department of Commerce, Sri Lanka. On this basis, it has been claimed by him that the manufacturing activity of bearings was undertaken in Sri Lanka and the Country of Origin Certificate were issued by the Department of Commerce. As per the records placed before me, the Advocate M/s V.M.Doiphode vide letter dated 10.05.2003 had made the following request to the Department of Commerce Sri Lanka:

"I will he highly obliged if the Department of Commerce furnish to us the following information to enable us to defend our client. Shri Anil Goel:
Whether the following Certificates of Origin is issued by the Deptt.of Commerce or their authorised signatory Certificate of origin Nos.
(i) CO/ISFTA/03/2748 dated 09.05.2003
(ii) CO/ISFTA/03/3618 dated 16.06.2003
(iii) CO/ISFTA/03/2 i 38 dated 03.04.2003
These certificate of origin were issued in respect of bearings exported from Sri Lanka by M/s Aurea Industries Pvt. Ltd.. You are therefore requested to confirm regarding the issue of above referred certificates at an early date."
In reply to this letter, M/s Bogollagama & Co., Bar-at-Law and Legal Consultants vide letter dated 11.06.2004 forwarded a letter dated 28.07.2004 claimed to be from Mr. R.D. Kulatilleke, Deputy Director of Commerce, Department of Commerce, Sri Lanka to Shri V.M. Doiphode .
This letter No. COM/ISFTA/C00/04 dated 28.07.2004 contains the following information:
"With reference to your letter of 10th May 2004, we are pleased to confirm that the certificate of origin referred to in your letter were issued by the Department of Commerce."
In this matter, it would not be out of place to mention here that it was already been verified by DRI during investigations and clearly brought out in the Show Cause Notice that the three certificates of origin as mentioned hereinabove were forged documents: However, in view of the noticee's aforesaid fresh submissions, the matter was taken up by DRI to verify authenticity of the said correspondence, submitted to the Adjudicating authority, as the contents thereof appeared to be quite vague and misleading. Verification were conducted through Sri Lankan Customs. Sri Lanka Customs, after conducting verifications with Deptt.

> of Commerce, Sri Lanka, informed vie letter No. CIU/WROA/05/07 dated 20.07.2005 that the certificate of origin nos. CO/ISFTA/03/2748 and CO/ISFTA/03/3618 though issued by Deptt. of Commerce , Sri Lanka, have not been issued to M/s Aurea Industries Pvt. Ltd. but instead have been issued to M/s Celetron Ltd., Kandy, Sri Lanka for computer parts manufactured by them. The copies of original certificates issued by the Department of Commerce were also enclosed with the said letter of Sri Lankan Customs. It was also informed by Sri Lankan Customs that certificate no. CO/ISFTA103/2138 is under investigation by them. The said correspondence is before me. These independent investigations made by the DRI through Sri Lankan Customs , thus, fully demolish the conclusion sought to be drawn by the noticee that the bearings were manufactured in Sri Lanka and the certificate of origin were genuine. Thus, the noticee is trying to mislead the Deptt. by mis-representation of facts. In these circumstances, I hold that the three forged certificates of origins as mentioned hereinabove are forged certificates."

9. We have considered both the aspects of the matter and have heard counsel of both sides. The learned counsel for the appellants have placed reliance on the decision of the Supreme Court in the case of ***Swadeshi Polytex Ltd. Vs. Collector*** reported in **2000 (122) E.L.T. 641 (S.C.)** as well as on ***Laxman Exports Limited Vs. Collector of Central Excise*** reported in **2002 (143) E.L.T. 21 (SC)** for the proposition that whenever any statement is relied upon by the Revenue, an opportunity of cross-examining the maker

of the statement should be given to the Noticee. Learned counsel for the appellants also placed reliance upon a decision of a Division Bench of this court in the case of ***J & K Cigarettes Ltd. Vs. Collector of Central Excise*** reported in **2011 (22) S.T.R. 225 (Del.)**.

10. Insofar as the general propositions are concerned, there can be no denying that when any statement is used against the assessee, an opportunity of cross-examining the persons who made those statements ought to be given to the assessee. This is clear from the observations contained in ***Swadeshi Polytex Ltd.*** *(supra)* and ***Laxman Exports Limited*** *(supra)*. Apart from this, the decision of this court in ***J & K Cigarettes Ltd***. *(supra)* clinches the issue in favour of the appellant. In that case, the validity of Section 9D of the Central Excise Act, 1944 was in question. The said Section 9D of the Central Excise Act, 1944 reads as under:-

> "9D. Relevancy of statement under certain circumstances – (1) A statement made and signed by a person before any Central Excise Officer of a gazette rank during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, an any prosecution for an offence under this Act, the truth of the facts which it contains:-
>
> (a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is incapable of giving evidence, or is

kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court."

11. We may straightaway say that the provisions of Section 9D of the Central Excise Act, 1944 are identical to the provisions of Section 138B of the Customs Act, 1962 which would be applicable in the present case.

12. Section 138B of the Customs Act, 1962 reads as under:-

"138B. Relevancy of statements under certain circumstances –(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant for the purpose of proving, an any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which,

under the circumstances of the case, the court considers unreasonable or

(b) When the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

It is apparent that both the provisions are identical.

13. This court while upholding the validity of Section 9D of the Central Excise Act, 1944 interpreted its provisions as under:-

"12. Bare reading of the above section manifests that under certain circumstances, as stipulated therein, statement made and signed by those persons before any Central Excise Officer of a gazette rank during the course of inquiry or proceedings under this Act can be treated as relevant and taken into consideration if under the given circumstances such a person cannot be produced for cross-examination. Thus, this provision makes such statements relevant for the purposes of proving the truth of the facts which it contains, in any prosecution for an offence under the Act in certain situations. Sub –Section (2) extends the provision of sub-section (1) to any proceedings under the Act other than a proceeding before the Court. In this manner, Section 9D can be utilized in adjudication proceedings before the Collector as well. In the present case, provisions of Section 9-D of the Act were invoked by the Collector holding that it was not possible to procure

> the attendance of some of the witnesses without undue delay or expense. Whether such a finding was otherwise justified or not can be taken up in the appeal."

14. The Division Bench also observed that though it cannot be denied that the right of cross-examination in any quasi judicial proceeding is a valuable right given to the accused/Noticee, as these proceedings may have adverse consequences to the accused, at the same time, under certain circumstances, this right of cross-examination can be taken away. The court also observed that such circumstances have to be exceptional and that those circumstances have been stipulated in Section 9D of the Central Excise Act, 1944. The circumstances referred to in Section 9D, as also in Section 138B, included circumstances where the person who had given a statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay and expense which, under the circumstances of the case, the Court considers unreasonable. It is clear that unless such circumstances exist, the Noticee would have a right to cross-examine the persons whose statements are being relied upon even in quasi-judicial proceedings. The Division Bench also observed as under:-

> "29. Thus, when we examine the provision as to whether the provision confers unguided powers or not, the conclusion is irresistible, namely, the

provision is not uncanalised or uncontrolled and does not confer arbitrary powers upon the quasi judicial authority. The very fact that the statement of such a person can be treated as relevant only when the specified ground is established, it is obvious that there has to be objective formation of opinion based on sufficient material on record to come to the conclusion that such a ground exists. Before forming such an opinion, the quasi judicial authority would confront the assessee as well, during the proceedings, which shall give the assessee a chance to make his submissions in this behalf. It goes without saying that the authority would record reasons, based upon the said material, for such a decision effectively. Therefore, the elements of giving opportunity and recording of reasons are inherent in the exercise of powers. The aggrieved party is not remediless. This order/opinion formed by the quasi judicial authority is subject to judicial review by the appellate authority. The aggrieved party can always challenge that in a particular case invocation of such a provision was not warranted."

15. The observations and conclusions arrived at by the Division Bench in the case of ***J & K Cigarettes Ltd.*** *(supra)* would apply with equal vigour to the provisions of Section 138B of the Customs Act, 1962. We find that this aspect of the matter has not been considered by any of the authorities below. In fact, section 138B of the Customs Act, 1962 has not been examined at all.

16. For this reason, we feel that the Tribunal should have a fresh look at these cases keeping in mind the provisions of Section 138B as also the decision of this court in ***J & K Cigarettes Ltd.*** *(supra)*. The Tribunal will also consider the fact of non-supply of the report and other documents which were obtained by the concerned authorities from Srilanka after hearing had been concluded on 14.10.2004. Consequently, we set aside the impugned order and remit the matters to the Tribunal for a fresh consideration in the light of the observations and directions given above. Parties shall be at liberty to raise all issues available to them in law.

17. The parties shall appear before the Tribunal on 7th May, 2013 in the first instance. No further notice would be necessary to any of the parties. The appeals stand disposed of.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

APRIL 12, 2013
SS

CASE 7 OF 35

M/s Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati & Ors.

Court	Supreme Court of India
Bench	A.K. Sikri and Rohinton Fali Nariman, JJ.
Date	14.05.2015
Case no. / citation	Civil Appeal Nos. 4458-4459 of 2015

Holding in brief

Detailed review of natural justice and prejudice. The authority cannot dispense with notice on its own view that the hearing would make no difference, but the Court may decline a remand where no prejudice is shown and a fresh notice would be a mere formality.

Paragraphs highlighted

Unnumbered paragraphs on presumption of no prejudice, the Court's power to weigh prejudice, and the 'mere formality' conclusion. Highlighted passages are on compendium pages 86-88.

Status

Final judgment; appeals dismissed.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 74.

M/S Dharampal Satyapal Ltd vs Dy.Commr.Of Cen.Exc.& Ors on 14 May, 2015

Author: A.K. Sikri

Bench: Rohinton Fali Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4458-4459 OF 2015
(ARISING OUT OF SLP (C) NOS. 37108-37109 OF 2012)

M/S. DHARAMPAL SATYAPAL LTD.	.....APPELLANT(S)	
VERSUS		
DEPUTY COMMISSIONER OF CENTRAL EXCISE, GAUHATI & ORS.	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

Union of India, vide Memorandum dated December 24, 1997, unveiled a new industrial policy for the North-Eastern region. In the said policy, in order to give stimulation to the development of industrial infrastructure in the North-Eastern region, the said region was made tax free zone for a period of ten years giving incentives to those who wanted to establish industries in that region. Pursuant thereto, the Notification dated July 08, 1999 was issued granting new industrial units that had commercial production on or after December 24, 1997 and certain types of industrial units that increased their installed capacity after that date, exemption on goods cleared from units located in growth centres and integrated infrastructure centres.

The aforesaid Notification was issued under the provision of Central Excise Act, 1944 as well as Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. However, on December 31, 1999, another Notification was issued whereby exemption of central excise was withdrawn in respect of goods falling under Chapter 21.06 (pan masala) and Chapter 24 (tobacco and tobacco substitutes, including cigarettes, chewing tobacco etc.).

This withdrawal Notification was challenged by the appellant by filing the writ petition in the High Court of Gauhati. The learned Single Judge dismissed the writ petition. However, appeal preferred by the appellant was allowed by the Division Bench vide judgment dated December 03, 2012. In nutshell, the High Court held that the principal of Promissory Estoppel shall apply and once a promise was given by the Union of India assuring that no such duty would be charged for a period of ten years, it was not open for the Union of India to withdraw the same. Challenging that judgment, Union of India filed petitions for special leave. Leave was granted and the petitions were registered as Civil Appeal Nos. 8841-8844 of 2003.

After the filing of the aforesaid appeals, certain subsequent events took place. It so happened that vide Section 154 of the Finance Act, 2003 (hereinafter referred to as the 'Act of 2003'), withdrawal of the benefit was effected from retrospective effect. Effect thereof was to withdraw the benefit given under the Notification issued earlier. Validity of Section 154 was questioned and the issue was considered by this Court in R.C. Tobacco Private Ltd. & Anr. v. Union of India & Anr.[1] This Court upheld the constitutional validity of the aforesaid provision and repelled the challenge so laid. The effect was to disentitle the appellant and other similarly situated from getting any such benefit by virtue of Section 154 of the Act of 2003 and knocking down the basis of the judgment of the High Court, which lost its validity on the aforesaid ground.

So far so good. The grievance of the appellant and other similarly situated industries for not extending the benefit of Notification dated July 08, 1999 is buried down. However, after notifying Section 154 of the Act of 2003, which had nullified the effect of Notification No. 32 of 1999 retrospectively thereby annulling the effect thereof altogether, respondent No.1 herein passed recovery order dated June 03, 2003 for recovery of a sum of ?2,93,43,244 (rupees two crores ninety three lakhs forty three thousand two hundred and forty four only) from the appellant, which was the benefit that had been drawn by the appellant for the period November 1999 till February 2001 in terms of the Notification No. 32 of 1999. By another order dated June 06, 2003 issued by respondent No.1, the appellant was directed to pay the excise duty for the said period for which the benefit had been availed. He also rejected the pending claim of refund for the period from March 2001 till May 31, 2003. These recovery orders were challenged by the appellant by filing appeal before the Commissioner (Appeals). Along with the appeal, the appellant also filed an application for interim order seeking stay against the pre-deposit. On this application, orders dated March 31, 2004 were passed by the Commissioner (Appeals) directing the appellant to deposit entire duty amount within a period of thirty days. This order of pre-deposit was challenged by the appellant by filing four writ petitions in the High Court of Gauhati. The learned Single Judge of the High Court, however, dismissed these writ petitions vide orders dated May 18, 2004. The appellant carried this issue of pre-deposit to a higher forum in the form of writ appeals before the Division Bench of the said Court. Interim orders dated June 11, 2004 were passed in the writ appeals directing the Commissioner (Appeals) not to dismiss the appeals preferred by the appellant before him for non-deposit of the duty amount. In other words, interim stay against the pre-deposit was given. The Commissioner (Appeals) heard the appeals and passed the orders dated June 15, 2005 deciding the appeals in favour of the appellant. He held that issuance of show-cause notice was mandatory before a valid recovery of demand could be made from the appellant and, thus, remitted the matter to the adjudicating authority. After this final order was passed by the Commissioner (Appeals), writ

appeals of the appellant before the Division Bench were disposed of as infructuous in view of the fact that the Commissioner (Appeals) had passed an order on merits and, therefore, no cause survived which required further adjudication in those appeals.

Insofar as the order of the Commissioner (Appeals) is concerned, both the appellant as well as the Revenue felt aggrieved thereby. The appellant was not satisfied with the order of remand and the nature of relief granted even after accepting that issuance of show-cause notice was mandatory before passing a valid recovery of demand. The respondents were aggrieved of the order passed on merit holding that show-cause notice was mandatory. Therefore, both the appellant as well as the Revenue filed appeals aggrieved against the order dated June 15, 2005 passed by the Commissioner (Appeals). The Customs Excise & Service Tax Appellate Tribunal (for short 'CESTAT') decided these appeals vide common order dated My 28, 2007. It reversed the orders of the Commissioner (Appeals), which resulted in allowing the appeal filed by the Revenue and dismissing the appeal preferred by the appellant. A perusal of the judgment of the CESTAT would reveal that it has primarily referred to the judgment of this Court in R.C. Tobacco and held that the matter stood concluded by the said judgment. The appellant challenged the order of CESTAT by filing Central Excise Tax Reference No. 1 of 2008 before the High Court of Gauhati. This Reference was dismissed by the High Court on December 01, 2011 on the ground of res judicata holding that orders dated May 18, 2004 passed by the Single Judge dismissing the writ petitions of the appellant had attained finality. The appellant preferred Review Petition seeking review of the said order, which has also been dismissed by the High Court on June 05, 2012. In the present appeals, the appellant has challenged both the orders dated December 01, 2011 passed in the Tax Reference as well as the order dated June 05, 2012 passed in the Review Petition.

From the brief narration of the background facts mentioned above, it is apparent that the frontal attack of the appellant against the recovery orders passed by the respondents is premised on the plea that no such recovery proceedings could be initiated without a show-cause notice under Section 11-A of the Excise Act. The appellant has also taken a plea in these appeals that order of the Single Judge at pre-deposit stage could not operate as res judicata on merits and, therefore, dismissal of the Tax Reference by the High Court, and consequently the Review Petition, is clearly erroneous and the High Court should have gone into the merits of the issue decided by CESTAT.

As noted above, CESTAT has decided the case against the appellant on the ground that issue now raised is covered by the judgment of this Court in R.C. Tobacco (supra). As pointed out, in R.C. Tobacco (supra), this Court has already upheld the validity of Section 154 of the Act of 2003 thereby taking away the benefit of Notification No. 32 of 1999 retrospectively insofar as excisable goods falling under Chapter 24 are concerned. Conscious of the position that judgment in R.C. Tobacco (supra) stares at the face of the appellant, Mr. Soli Sorabjee, learned senior counsel who appeared for the appellant, has also made an endeavour to show that the said judgment in R.C. Tobacco (supra) is in clear conflict with earlier three Judge Bench judgment of this Court in M/s. J.K. Cotton Spinning and Weaving Mills Ltd. v. Union of India[2]. Thus, following three issues have arisen for consideration in these appeals:

(a) Whether order of the Single Judge at pre-deposit stage can operate as res judicata on merits?

(b) Whether recovery proceedings can be initiated without show-cause notice under Section 11A of the Excise Act, which is mandatory?

(c) Whether there is a conflict between the three Judge Bench judgment in J.K. Cotton (supra) and R.C. Tobacco (supra)?

First issue is the basis for the judgment of the High Court.

For answering this issue, it would be necessary to take into account the complete implication thereof with reference to the nature of recovery orders passed by respondent No.1, challenge thereto before the Commissioner (Appeals) and interim order of pre-deposit passed by the Commissioner (Appeals) on March 31, 2004 as also the nature of challenge which was laid by the appellant against the said order of pre-deposit in the writ petitions filed in the High Court, which were dismissed by the learned Single Judge on May 18, 2004.

By virtue of Notification dated July 08, 1999, the appellant was granted refund of the duty deposited in cash up to February 2001. After the enactment of Section 154 of the Act of 2003, recovery order dated June 03, 2003 was passed for recovery of the aforesaid amount which had been refunded to the appellant. Simultaneously, another order dated June 06, 2003 was issued asking the appellant to pay duty on the ground that such goods were no more exempted from payment of duty. In the appeals which were filed by the appellants before the Commissioner (Appeals) challenging the aforesaid orders, the Commissioner passed interim orders dated March 31, 2004 directing the appellants to pay the amount demanded by the aforesaid orders. This order dated March 31, 2004 of the Commissioner (Appeals) reflects that the Commissioner went into various issues raised by the appellant on the basis of which it was pleaded by the appellant that it had a good case on merits and, therefore, condition of pre-deposit be waived. Apart from the contention that no show-cause notice was given before passing those orders, it was even argued that by making the retrospective amendment in the form of Section 154 of the Act of 2003, the only effect was to validate the earlier actions but no demand of refund of any amount could be made and no refund of the amount already paid could be claimed. It was also argued that the matter of recovery of amounts was pending consideration of Central Board of Excise and Customs (CBEC) as well as in the Gauhati High Court. All these issues were considered by the Commissioner (Appeals), who gave his prima facie view thereupon observing that the appellants did not have strong prima facie case on merits resulting into the direction to deposit the entire amount within thirty days.

The appellant had filed writ petitions against the aforesaid order of the Commissioner (Appeals) with the prayer that the direction of the Commissioner (Appeals) to deposit the entire amount within thirty days be set aside and the prayer of pre-deposit of the appellant be accepted. No doubt, while arguing for this relief, the appellant had raised various contentions on the merits of the case in its endeavour to demonstrate that it had a good case on merits. It is also borne from the record that the learned Single Judge, while dismissing the writ petition, dealt with these issues, which touched

upon the merits of the main issue. That is the reason that the order dated May 18, 2004 of the learned Single Judge dismissing the writ petition of the appellant runs into 37 pages. Nevertheless, we find that the observations which were made by the learned Single Judge on the issues raised were only prima facie in nature and the prime focus of the judgment rested on the core issue, namely, whether the direction of the Commissioner (Appeals) directing the appellant to make deposit of the amount as a pre-condition for hearing of the appeal was sustainable or not. The writ petition was dismissed affirming the said order. Therefore, any observations made by the learned Single Judge, which were tentative in nature, could not be taken into consideration by the Division Bench in the impugned judgment, thereby dismissing the Reference, invoking the principle of res judicata. The order of the learned Single Judge dismissing the writ petition was challenged before the Division Bench and the Division Bench passed interim orders in the writ appeals not to dismiss the appeals preferred by the appellant for non-deposit of the duty. In this backdrop, appeals were heard and appellant even partly succeeded. After the order of the Commissioner (Appeals) dated June 15, 2005 deciding the appeals partly in favour of the appellant, the writ appeals which were pending before the Division Bench had become infructuous and disposed of as such without going into the merit of the order passed by the learned Single Judge. This is yet another reason to hold that the order of the learned Single Judge could not be treated as res judicata.

Having regard to the aforesaid position, we heard the instant appeal on merits, namely, on the issue as to whether it was mandatory to issue show- cause notice making an order of recovery. The Commissioner (Appeals) has held it to be mandatory and this order of the Commissioner (Appeals) has been set aside by the CESTAT. The Reference petition against the order of CESTAT, though wrongly is dismissed on the ground of res judicata, the impugned order shows that it has mentioned that such show-cause notice was not mandatory as held by the learned Single Judge by order dated May 18, 2004.

Learned senior counsel appearing for the appellant as well as learned Attorney General agreed that in this situation this Court may decide the aforesaid issue finally. It is for this reason that we have heard counsel for the parties at length on this aspect of the matter.

The neat submission made by Mr. Soli Sorabjee on behalf of the appellant was that the impugned demand of the Assistant Commissioner was in the nature of adjudication whereby the amount demanded in the order dated June 06, 2003 was crystallized and, therefore, there could not have been demand for recovery of the stipulated amount without issuing notice to the appellant and giving the appellant herein right of hearing. He also submitted that merely because vires of Section 154 of the Act of 2003 were upheld by this Court in R.C. Tobacco (supra) could not be a ground to dispense with the aforesaid mandatory requirements of principles of natural justice. His further submission was that 'no prejudice' principle adopted by the CESTAT amounted to erroneous approach. He sought to draw a fine distinction in this behalf by contending that the Authority passing the order could not presume that prejudice would not be caused to a person against whom the action is contemplated and on that presumption dispense with the mandatory requirement of issuance of the notice. According to him, such a doctrine could be applied only by the courts while dealing with such issues where it is found that the action of the Authority was violative of principles of natural justice, the Court could still choose not to remit the case back to the concerned Authority

if it finds that it will be a futile exercise.

As a pure principle of law, we find substance and force in the aforesaid submission of Mr. Sorabjee. No doubt, the Department was seeking to recover the amount paid by virtue of Section 154 of the Act of 2003 which was enacted retrospectively and the constitutional validity of the said Section had already been upheld by this Court in R.C. Tobacco (supra) at the time of issuance of notice for recovery. Further, no doubt, the effect of the said amendment retrospectively was to take away the benefit which was granted earlier. However, the question is whether before passing such an order of recovery, whether it was necessary to comply with the requirement of show-cause notice? The appellant wanted to contend that Section 11A of the Excise Act was applicable, which requires this procedure to be followed. Even if that provision is not applicable, it is fundamental that before taking any adverse action against a person, requirement of principles of natural justice is to be fulfilled. This Court in Collector of Central Excise, Patna & Ors. v. I.T.C. Limited & Anr.[3] has held that show-cause and personal hearing is necessary before saddling an assessee with additional demand. It is also trite that when a statute is silent, with no positive words in the Act or Rules spelling out need to hear the party whose rights or interests are likely to be affected, requirement to follow fair procedure before taking a decision must be read into statute, unless the statute provides otherwise.

What is the genesis behind this requirement? Why it is necessary that before an adverse action is taken against a person he is to be given notice about the proposed action and be heard in the matter? Why is it treated as inseparable and inextricable part of the doctrine of principles of natural justice?

Natural justice is an expression of English Common Law. Natural justice is not a single theory – it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called 'naturalist' approach to the phrase 'natural justice' and is related to 'moral naturalism'. Moral naturalism captures the essence of commonsense morality – that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi- judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of

a 'reasoned order'.

Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's 'Arthashastra'. This Court in the case of Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.[4] explained the Indian origin of these principles in the following words:

> "Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam – and of Kautilya's Arthashastra – the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system".
>
> Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth Centuries A.D. called it 'jura naturalia', i.e. natural law.
>
> The principles have sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.
>
> This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as 'hearing the other side'. Prof. D.J. Galligan[5] attempts to provide what he calls 'a general theory of fair treatment' by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasizing that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not

working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham[6], who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

"On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as determined from time to time by the law makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved." Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits and burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject matter of fair treatment. However, that aspect need not be dilated.

Allan[7], on the other hand, justifies the procedural fairness by following the aforesaid principles of natural justice as rooted in rule of law leading to good governance. He supports Galligan in this respect and goes to the extent by saying that it is same as ensuring dignity of individuals, in respect of whom or against whom the decision is taken, in the following words:

"The instrumental value of procedures should not be underestimated; the accurate application of authoritative standards is, as Galligan clearly explains, an important aspect of treating someone with respect. But procedures also have intrinsic value in acknowledging a person's right to understand his treatment, and thereby to determine his response as a conscientious citizen, willing to make reasonable sacrifices for the public good. If obedience to law ideally entails a recognition of its morally obligatory character, there must be suitable opportunities to test its moral credentials. Procedures may also be though to have intrinsic value in so far as they constitute a fair balance between the demands of accuracy and other social needs: where the moral harm entailed by erroneous decisions is reasonably assessed and fairly distributed, procedures express society's commitment to equal concern and respect for all." It, thus, cannot be denied that principles of natural justice are grounded in procedural fairness which ensures taking of correct decision and procedural fairness is fundamentally an instrumental good, in the sense that

procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.

It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural jsutice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

De Smith[8] captures the essence thus - “Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice”.

Wade[9] also emphasizes that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. In Cooper v. Sandworth Board of Works[10] the Court laid down that: '...although there is no positive word in the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature”. Exhaustive commentary explaining the varied contours of this principle can be traced to the judgment of this Court in Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.[11], wherein the Court discussed plenty of previous case law in restating the aforesaid principle, a glimpse whereof can be found in the following passages:

“20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A. K. Kraipak v. Union of India, (1969) 2 SCC 262 : (1970) 1 SCR 457, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi- judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on

the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In Chairman, Board of Mining Examination v. Ramjee, (1977) 2 SCC 256, the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In Institute of Chartered Accountants of India v. L. K. Ratna, (1986) 4 SCC 537, Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 (Bhopal Gas Leak Disaster Case) and C. B. Gautam v. Union of India, (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated." In his separate opinion, concurring on this fundamental issue, Justice K. Ramaswamy echoed the aforesaid sentiments in the following words:

"61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that principles of natural justice are integral part of Article

14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision.

The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice." Likewise, in C.B. Gautam v. Union of India & Ors.[12], this Court once again held that principle of natural justice was applicable even though it was not statutorily required. The Court took the view that even in the absence of statutory provision to this effect, the

authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, 1961. It was further observed that the very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that before such an imputation can be made against the parties concerned they must be given an opportunity to show-cause that the under valuation in the agreement for sale was not with a view to evade tax. It is, therefore, all the more necessary that an opportunity of hearing is provided.

From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K. Kraipak's case (supra) that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In the case of Maneka Gandhi v. Union of India & Anr.[13] also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required. In Maharashtra State Financial Corporation v. M/s. Suvarna Board Mills & Anr.[14], this aspect was explained in the following manner:

> "3. It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straight-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law: All will depend on facts and circumstances of the case." In the case of East India Commercial Company Ltd., Calcutta & Anr. v. The Collector of Customs, Calcutta[15], this Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principle of natural justice are violated. To the same effect are the following judgments:
>
> a) U.O.I. & Ors. v. Madhumilan Syntex Pvt. Ltd. & Anr.[16]
>
> b) Morarji Goculdas B&W Co. Ltd. & Anr. v. U.O.I. & Ors.[17]
>
> c) Metal Forgings & Anr. v. U.O.I. & Ors.[18]

d) U.O.I. & Ors. v. Tata Yodogawa Ltd. & Anr.[19] Therefore, we are inclined to hold that there was a requirement of issuance of show-cause notice by the Deputy Commissioner before passing the order of recovery, irrespective of the fact whether Section 11A of the Act is attracted in the instant case or not.

But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation[20], who said that a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court dos not act in vain'. Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority[21] that 'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null

and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

In Managing Director, ECIL (supra), the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle:

> "30. Hence the incidental questions raised above may be answered as follows:
>
> xx xx xx
>
> (v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-

furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice." So far so good. However, an important question posed by Mr. Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in the case of General Medical Council v. Spackman[22]. This Court also spoke in the same language in the case of The Board of High School and Intermediate Education, U.P. & Ors. v. Kumari Chittra Srivastava & Ors.[23], as is apparent from the following words:

"8. The learned counsel for the appellant, Mr. C.B. Aggarwal, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed." In view of the aforesaid enunciation of law, Mr. Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since judgment in R.C. Tobacco (supra) had closed all the windows for the appellant.

At the same time, it cannot be denied that as far as Courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in the case of Managing Director, ECIL (supra) itself in the following words:

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/ Tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/ Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as it regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment." Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco (supra).

To recapitulate the events, the appellant was accorded certain benefits under Notification dated July 08, 1999. This Notification stands nullified by Section 154 of the Act of 2003, which has been given retrospective effect. The legal consequence of the aforesaid statutory provision is that the amount with which the appellant was benefitted under the aforesaid Notification becomes refundable. Even after the notice is issued, the appellant cannot take any plea to retain the said amount on any ground whatsoever as it is bound by the dicta in R.C. Tobacco (supra). Likewise, even the officer who passed the order has no choice but to follow the dicta in R.C. Tobacco (supra). It is important to note that as far as quantification of the amount is concerned, it is not disputed at all. In such a situation, issuance of notice would be an empty formality and we are of the firm opinion that the case stands covered by 'useless formality theory'.

In Escorts Farms Ltd. (Previously known as M/s. Escorts Farms (Ramgarh) Ltd.) v. Commissioner, Kumaon Division, Nainital, U.P. & Ors.[24], this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms:

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India." Therefore, on the facts of this case, we are of the opinion that non- issuance of notice before sending communication dated June 23, 2003 has not resulted in any prejudice to the appellant and it may not be feasible to direct the respondents to take fresh action after issuing notice as that would be a mere formality.

With this we advert to the last submission of Mr. Sorabjee that the judgment in R.C. Tobacco (supra) (which is a two Judge Bench decision) is in conflict with the three Judge Bench judgment in J.K. Cotton (supra). This argument is not even open to the appellant for the simple reason that the judgment in J.K. Cotton (supra) was specifically taken note of and discussed in R.C. Tobacco (supra). Paragraph 13 of the judgment in R.C. Tobacco (supra) would reflect that the appellant therein had specifically relied upon the judgment in J.K. Cotton (supra) in support of the

submission that retrospectivity was harsh and excessive since there is, in fact, a retrospective imposition of excise duty. It was also argued that justification of such retrospective imposition of tax must be overwhelming and no such overriding consideration had been disclosed. The submission went to the extent of pleading that if the appellant is called upon to pay the excise duty now it will cripple its unit. More pertinent was another submission, which is relevant for our purpose, that the demand which was raised could not be sustained as it was made without issuing any show-cause notice and was in contravention of Section 11A of the Act. In support of this view, few judgments, including J.K. Cotton (supra), were relied upon. The Court, however, did not find any merit in the aforesaid submissions and dealt with the issue as under, duly taking note of the judgment in J.K. Cotton (supra):

"40. In J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India, (1987) Supp. SCC 350, relied upon by the petitioners, by virtue of the retrospective amendment of Rules 9 and 49 of the Central Excise Rules in 1982, commodities obtained at an intermediate stage of manufacture in a continuous process were deemed to have been 'removed' within the meaning of Rule 9(1) thereby making such intermediate products dutiable under the Act with effect from the commencement of the Act i.e. 1944. In this context the Court held that the amended Rules 9 and 49 would take effect subject to Section 11-A. The decision is distinguishable. The circumstances in which the Court held that the demands for duty could only be limited to six months prior to the amendment was unquestionably different from those present in the case before us. What we have to consider here is whether the benefit granted in 1999 could be withdrawn in 2003. Besides, the Court in J.K. Cotton Spg. & Wvg. Mills Ltd. case rejected the contention of the Union of India that Section 51 of the 1982 Finance Act by which the amendments were made to Rules 9 and 49 overrode the provisions of Section 11-A saying: (SCC p. 363, para 32) "if the intention of the legislature was to nullify the effect of Section 11-A,.. the legislature would have specifically provided for the same." Similarly our decision in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India, (2003) 5 SCC 23 which dealt with an amendment to Section 80-P(2)(a)(iii) of the Income Tax Act, 1961 noted that: (SCC p.35, para 29) "The amendment does not seek to touch on the periods of limitation provided in the Act, and in the absence of such express provision or clear implication, the legislature clearly could not be taken to intend that the amending provisions authorizes the Income Tax Officer to commence proceedings which before the new Act came into force, had, by the expiry of the period provided become barred".

In the present case Section 154(4) specifically and expressly allows amounts to be recovered within a period of thirty days from the day Finance Bill, 2003 received the assent of the President. It cannot but be held therefore that the period of six months provided under Section 11-A would not apply." 40A) In the aforesaid scenario, when the Court was conscious of the principle laid down in J.K. Cotton (supra) and explained the same in a particular manner while deciding the appeal in R.C. Tobacco (supra), it cannot be argued that the judgment in R.C. Tobacco (supra) runs contrary to J.K. Cotton (supra).

For all these reasons, the appeals are dismissed.

.....J. (A.K. SIKRI) .....J. (ROHINTON FALI NARIMAN) NEW DELHI;

MAY 14, 2015.

(2005) 7 SCC 725 [2] (1987) Supp SCC 350 [3] (1995) 2 SCC 38 [4] (1978) 1 SCC 405 : AIR 1978 SC 851 [5] On 'Procedural Fairness' in Birks (ed), the Frontiers of Liability (Volume One) (Oxford 1994) [6] A Treatise of Judicial Evidence (London 1825) [7] 'Procedural Fairness and the Duty of Respect', (198) 18 OJLS 497 [8] Judial Review of Administrative Action (1980), at page 161 [9] Administrative Law (1977), at page 395 [10] (1863) 14 GB (NS) [11] (1993) 4 SCC 727 [12] (1993) 1 SCC 78 [13] (1978) 1 SCC 248 [14] (1994) 5 SCC 566 [15] AIR 1962 SC 1893 [16] (1988) 3 SCC 348 [17] (1995) Supp 3 SCC 588 [18] (2003) 2 SCC 36 [19] 1988 (38) ELT 739 (SC) :: 1988 (19) ECR 569 (SC) [20] (1971) 1 WLR 1578 at 1595 [21] (1980) 1 WLR 582 at 593 [22] 1943 AC 627 [23] (1970) 1SCC 121 : AIR 1970 SC 1039 [24] (2004) 4 SCC 281

CASE 8 OF 35

M/s Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II

Court	Supreme Court of India
Bench	A.K. Sikri and Rohinton Fali Nariman, JJ.
Date	02.09.2015
Case no. / citation	Civil Appeal No. 4228 of 2006

Holding in brief

The statements of two buyers were the only basis of the notice, and cross-examination was asked for and refused. Denial of cross-examination in such a case is a serious flaw that makes the order a nullity; if the testimony is discredited nothing remains.

Paragraphs highlighted

Unnumbered operative paragraphs. Highlighted passages are on compendium pages 95-97.

Status

Final judgment; assessee's appeal allowed.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 92.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4228 OF 2006

M/S ANDAMAN TIMBER INDUSTRIES ... Appellant

VERSUS

COMMISSIONER OF CENTRAL EXCISE,KOLKATA-II ... Respondent

O R D E R

The appellant-assessee has a factory at Bamboo Flat, South Andamans and its head office is in Calcutta. The assessee is manufacturing ply-woods and related products in its factory at South Andamans. Some of these products are sold from the factory premises in South Andamans only to certain buyers. However, major portion of the products manufactured there are sold to other dealers from their numerous depots which are situated at different places in the country. The assessee had filed its declaration under Section 173C of the Central Excise Rules showing the price of the goods at which they were sold ex-factory and delivery basis. The respondent-Revenue found that there was a lot of price difference between the goods sold at ex-factory and delivery basis in comparison with the goods which were sold to the buyers from their depots. Investigation was carried out. Statements of two buyers, viz., Sri Sreeram Tekriwal, partner of M/s. Sreeram Santosh Kumar, Calcutta and Sri Mahendra Laxmidas Panchmati, partner of M/s. Laxmidas Brothers, Bombay were recorded and on that basis, Show Cause

Notice dated 03.05.1995 was served upon the assessee stating as to why the price at which the goods were sold to these customers from the depots may not be the basis for determining the value for the purpose of excise duty. The respondent contested the aforesaid Show Cause Notice by furnishing its reply wherein various defences / justifications were given. Among others, it was stated that on the same ground, proceedings were taken earlier which resulted in favour of the assessee by the decision of the Tribunal and that decision of the Tribunal was accepted as no further appeal was filed by the Department thereagainst. The assessee also questioned the correctness of the statements of the aforesaid two witnesses and demanded right to cross-examine them. The matter was heard. Thereafter, the Adjudicating Authority passed the order confirming the demand in the Show Cause Notice. The Adjudicating Authority also took into consideration the price list of the assessee maintained at its depots which was treated as the price for the purposes of levying the excise duty.

The appellant filed appeal against the aforesaid order of the Adjudicating Authority. However, this appeal is also been dismissed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'Tribunal'). The perusal of the order of the Tribunal would demonstrate that it had taken note of the plea specifically raised by the assessee that the normal ex-factory sale price should be treated as normal price by virtue of the provisions of

Section 4 of the Central Excise Act and to which only transportation cost could be added. Number of judgments were cited in support of this proposition which are taken note of by the Tribunal. However, on two grounds, the Tribunal rejected the appeal of the assessee. These are: -

(1) The ex-factory sale was hardly 2 percent and most of the sales, i.e., to the extent of 98 per cent, were from the depots of the assessee which are situated at other places and not at the place of factory, i.e., South Andamans.

(2) Though the price at which sales were made ex-factory at South Andamans remains the same over a period of time as far as sales to depots are concerned, the price increased from time to time.

Insofar as the plea of the appellant that it was not allowed to cross-examine the dealers whose statements were relied upon by the Adjudicating Authority in passing the orders, the Tribunal rejected its plea in the following manner: -

> "6. The plea of no cross examination granted to the various dealers would not help the appellant case since the examination of the dealers would not bring out any material which would not be in the possession of the appellant themselves to explain as to why their ex factory prices remain static. Since we are not upholding and applying the ex factory prices, as we find them contravened and not normal price as envisaged under section 4(1), we find no reason to disturb the Commissioners orders."

Challenging the aforesaid order, the present appeal is

preferred by the appellant-assessee.

We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.

According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the

Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause

Notice.

We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal.

No costs.

......, J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
September 02, 2015.

ITEM NO.108 COURT NO.13 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 4228/2006

M/S ANDAMAN TIMBER INDUSTRIES Appellant(s)

VERSUS

COMMR.OF CENTRAL EXCISE,KOLKATA-II Respondent(s)

(With office report)

Date : 02/09/2015 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)
Mr. Kavin Gulati, Sr. Adv.
Mr. Praveen Kumar, Adv.
Mr. Avi Tandon, Adv.
Ms. Sunaina Kumar, Adv.

For Respondent(s)
Mr. K. Radhakrishnan, Sr. Adv.
Mr. T. M. Singh, Adv.
Ms. Aruna Gupta, Adv.
Ms. Alka Agarwal, Adv.
Mr. B. Krishna Prasad, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER

(Renu Diwan)
COURT MASTER

[Signed order is placed on the file.]

CASE 9 OF 35

Him Logistics Pvt. Ltd. v. The Principal Commissioner of Customs

Court	High Court of Delhi
Bench	S. Muralidhar and Vibhu Bakhru, JJ.
Date	26.02.2016
Case no. / citation	2016:DHC:1612-DB; W.P.(C) 1697/2016

Holding in brief

Following Basudev Garg, the noticee is entitled to cross-examine the importer's partners whose statements the Department relied on; the order refusing cross-examination was set aside, with time-bound directions and extension of the adjudication period.

Paragraphs highlighted

Paras 17 to 19. Highlighted passages are on compendium pages 106-107.

Status

Final order on the writ petition.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 100.

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1697/2016

HIM LOGISTICS PVT. LTD ..... Petitioner
Through Mrs. Anjali J. Manish and
Mr. Priyadarshi Manish, Advocates

versus

THE PRINCIPAL COMMISIONER OF CUSTOMS ... Respondent
Through Ms.Sonia Sharma, Senior Standing Counsel

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **26.02.2016**

Dr. S. Muralidhar, J.:

CM No.7257/2016 (exemption)

1. Allowed subject to all just exceptions.

2. The application is disposed of.

WP (C) 1697/2016 & CM No. 7256/2016 (Stay)

3. Notice. Ms. Sonia Sharma, Advocate, accepts notice for the Respondent.

4. Since the point involved is a short one, the petition is taken up for final hearing.

5. The challenge in this petition is to an order dated 17th February 2016 passed by the Deputy Commissioner (Adjudication) ICD Import Thuglakabad [hereafter the 'Adjudicating Authority' (AA)] declining the

Petitioner's request for cross-examination of two persons, who statements have been relied upon in the proceedings initiated against the Petitioner. issue concerns the denial by the Commissioner of Customs

6. The facts are not in dispute. A show cause notice ('SCN') dated 1st November 2014 was issued to M/s Spreet International (hereafter 'importer') as well as the Petitioner and four others by the Additional Director General, Directorate of Revenue Intelligence (DRI). The SCN alleged that the importer and the said persons, in collusion with the Petitioner who is a customs house agent (now known as 'customs broker') acted in collusion to make illegal import of auto parts by way of a Bill of Entry (B/E) using forged documents. The SCN *inter alia* proposed to confiscate the illegally imported goods, raise a demand for the customs duty evaded apart from interest and penalty.

7. The details of the said SCN need not be set out in detail for the present purposes except to the extent of noting that the partners of the importer firm Mr. Shyam Lal and Ms. Preeti, had 'voluntarily' given statements to the DRI, during the course of investigation, which have been relied upon by the AA in the course of the adjudication proceedings. The specific case of the DRI is that the said partners of the importer acted in collusion with the Petitioner in making the illegal imports. Therefore, their statements are a critical piece of evidence being relied upon by the Respondent in support of the SCN.

8. One of the co-noticees of the SCN, Mr. Pawan Kumar Ralli, filed WP (C) No.777/2015 in this Court, in which an order was passed by the Court on 25th January 2016, by the consent of the parties, which included the Principal Commissioner of the Customs (Import), directing that the SCN

dated 1st November 2014 should be adjudicated within a period of s weeks from that date.

9. On 9th February, 2016, the Petitioner wrote to the AA *inter alia* requesting for the cross-examination of Mr. Shyam Lal and Ms.Preeti. This was reiterated by another letter dated 15th February, 2016. The attention of the AA was drawn to Section 138 B of the Customs Act, 1962 ('Act') and the decision of this Court in ***Flevel International v. Commissioner of Central Excise 2016 (332) ELT 416 (Del)*** which in turn referred to the decisions in ***Basudev Garg v. Commissioner of Customs 2013 (294) ELT 353(Del), Laxman Exports Ltd. v. Controller of Central Excise 2002 (143) ELT 21(SC)*** and ***Swadeshi Polytex ltd. v. Collector of Central Excise 2000 (122) ELT641 (SC).***

10. By the impugned order dated 17th February 2016, the AA rejected the above request of the petitioner. The AA relied on a decision of the CESTAT in ***Jagdish Shankar Trivedi v. Commissioner of Customs 2006 (194) ELT 290 (Tri- Del)*** which held that the failure to afford an Assessee the right to cross-examine witnesses would not violate the principles of natural justice. The AA fixed the final hearing for 26th February 2016, i.e. today, at 3 pm. It is in these circumstances that the present petition has been filed.

11. While Ms. Anjali Manish learned counsel for the Petitioner reiterated the submissions in the petition and prayed for a opportunity to be provided to the Petitioner cross-examine the aforementioned two persons, Ms.Sonia Sharma, learned counsel for the Respondent vehemently resisted the said prayer. Reliance was placed by Ms. Sharma on the decision of the learned Single Judge of this Court in ***Shahid Balwa v.***

The Directorate of Enforcement (199) 2013 DLT 380 and the decisi of the Supreme Court in ***M. Prabhulal v. Assistant Director, Directorate of Revenue Intelligence (2003)8 SCC 449***.

12. The above submissions have been considered. At the outset it requires to be noted that the decision in ***M. Prabhulal v. Assistant Director, Directorate of Revenue Intelligence*** (*supra*) arose in the context of the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act). The question was whether Section 42 (2) of the NDPS Act would apply to a search and seizure conducted by a Gazetted Officer under Sections 41 (2) and (3) of the NDPS Act. That decision does not even remotely suggest that the person against whom a statement is sought to be used by an AA would not be entitled to cross-examine the maker of such statement in the course of the adjudication proceedings. The decision in ***Shahid Balwa*** (*supra*) which arose under the Foreign Exchange Management Act 1999 acknowledged, in para 7.2, that the enforceability of the right to cross-examine witnesses or persons who have made statements against a party "if demanded, would depend upon the facts and circumstances of the case, the nature of enquiry, the provisions of the statute and the rules as also the regulations governing the enquiry, the conduct of the person seeking to enforce the right of cross-examination i.e., as to whether such a right was demanded in the very first instance or not, the prejudice, if any, caused to such a party by being denied the right of cross-examination on assessment of the entire material, which is placed before the authority conducting the enquiry."

13. In the context of the present case, Section 138 B of the Act is relevant and reads as under:

"138B. Relevancy of statements under certain circumstances.—

> (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—
>
> (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
>
> (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
>
> (2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

14. The above provision is *in pari materia* Section 9D of the Central Excise Act 1944 ('CE Act'), which was explained by the Division Bench of this Court in ***Basudev Garg*** (*supra*) as under:

> "10. Insofar as the general propositions are concerned, there can be no denying that when any statement is used against the assessee, an opportunity of cross-examining the persons who made those statements ought to be given to the assessee. This is clear from the observations contained in *Swadeshi Polytex Ltd. (supra)* and *Laxman Exports Limited (supra)*. Apart from this, the decision of this court in *J & K Cigarettes Ltd. (supra)* clinches the issue in favour of the appellant. In that case, the validity of Section 9D of the Central Excise Act, 1944 was in question."

15. After noticing the decision in ***J & K Cigarettes Ltd. v. Collector of Central Excise reported in 2009 (242) ELT 189 (Del)*** which had upheld

the validity of Section 9D of the CE Act, the Court in ***Basudev Ga*** (*supra*) observed as under:

> *"*14. The Division Bench also observed that though it cannot be denied that the right of cross-examination in any quasi judicial proceeding is a valuable right given to the accused/Noticee, as these proceedings may have adverse consequences to the accused, at the same time, under certain circumstances, this right of cross-examination can be taken away. The court also observed that such circumstances have to be exceptional and that those circumstances have been stipulated in Section 9D of the Central Excise Act, 1944. The circumstances referred to in Section 9D, as also in Section 138B, included circumstances where the person who had given a statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay and expense which, under the circumstances of the case, the Court considers unreasonable. It is clear that unless such circumstances exist, the Noticee would have a right to cross- examine the persons whose statements are being relied upon even in quasi- judicial proceedings. The Division Bench also observed as under:-
>
> > "29. Thus, when we examine the provision as to whether the provision confers unguided powers or not, the conclusion is irresistible, namely, the provision is not uncanalised or uncontrolled and does not confer arbitrary powers upon the quasi judicial authority. The very fact that the statement of such a person can be treated as relevant only when the specified ground is established, it is obvious that there has to be objective formation of opinion based on sufficient material on record to come to the conclusion that such a ground exists. Before forming such an opinion, the quasi judicial authority would confront the assessee as well, during the proceedings, which shall give the assessee a chance to make his submissions in this behalf. It goes without saying that the authority would record reasons, based upon the said material, for such a decision effectively. Therefore, the elements of giving opportunity and recording of reasons are inherent in the exercise of powers. The aggrieved party is not remediless. This order/opinion formed by the quasi judicial authority is subject to judicial review by the appellate authority. The aggrieved party can always challenge that in a

particular case invocation of such a provision was n warranted."

16. The legal position explained in the above decisions was reiterated by another Division Bench of this Court recently in ***Flevel International vs. Commissioner of Central Excise*** (*supra*) where again the decision of the AA to deny the Assessee the right of cross-examination was held to be unsustainable in law being contrary to Section 9D of the CE Act.

17. In the present case, it is an admitted fact that the Respondent Department is placing considerable reliance on the statements of Mr. Shyam Lal and Ms. Preeti, the partners of the importer, in support of the case made out in the SCN. The impugned order of the AA does not indicate that any prejudice would be caused to the Department by providing the Petitioner the right of cross-examination. On the other hand the denial of such right would prejudice the Petitioner since the said statements are adverse to the Petitioner. In the circumstances, the denial of the Petitioner's right of cross-examination is held contrary to the law explained in ***Basudev Garg*** (*supra*).

18. Consequently, the Court sets aside the order dated 17th February, 2016 passed by the AA declining the request of the Petitioner for cross-examination of Mr. Shyam Lal and Ms. Preeti.

19. The AA shall now fix a date not later than within two weeks from today for the appearance of Mr. Shyam Lal and Ms. for cross-examination by the Petitioner. The Petitioner will proceed with their cross-examination without seeking any adjournment and conclude it not later than one week thereafter. The time limit of completing the

adjudication proceedings and passing the adjudication order is extend by a period of two months from the date of conclusion of the cross examination.

20. The writ petition is disposed of in the above terms.

21. Order *dasti* under the signature of the Court Master. Ms. Sonia Sharma, learned counsel for the Respondent, will communicate to the AA today's order forthwith.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 26, 2016
`ns'

CASE 10 OF 35

R S Windlass & Sons v. Union of India & Ors.

Court	High Court of Delhi
Bench	S. Muralidhar and Vibhu Bakhru, JJ.
Date	26.05.2016
Case no. / citation	W.P.(C) 4706/2016

Holding in brief

Non-relied-upon documents must be returned and the noticee may inspect the investigation file before replying; where a portion cannot be shown, the adjudicating authority must record reasons in writing. Directions were given on time for reply and adjudication.

Paragraphs highlighted

Paras 10, 11 and 13. Highlighted passages are on compendium pages 112-114.

Status

Final order; writ petition disposed of with directions.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 109.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

1.

\+ **W.P.(C) 4706/2016 & CM 19636/2016 (stay)**

R S WINDLASS & SONS ..... Petitioner

Through Mr Jitendra Singh, Mr Anshumaan Sahni, Mr Apurv Chandola and Mr Ritwik Kumar, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr Anil Panwar, Advocate for R1.
Mr Satish Kumar, Senior Standing Counsel for R2,3 & 4.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% 26.05.2016

1. The challenge in this writ petition is to a show cause notice (SCN) dated 18th March, 2016 issued to the Petitioner by the Joint Commissioner Special Investigation & Intelligence Branch (Export) in the Office of the Commissioner of Customs ICD, Export, Commissionerate, TKD. New Delhi.

2. The facts in brief are that the Petitioner is a partnership firm carrying on the work of garment manufacture export at its manufacturing unit located in C-21, Hosiery Complex, Phase-II, NOIDA, Uttar Pradesh. The Petitioner is

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Compendium: RUDs and natural justice | page 109 of 465 Back to Index

stated to have submitted an application to the office of Development Commissioner, NOIDA Special Economic Zone ('NSEZ') on 8th September, 2006 for setting up a 100% Export Oriented Unit ('100% EOU') and this application is stated to have been allowed by the NSEZ on 7th December, 2006. It is stated that after a letter of permission (LOP) was issued by the NSEZ, an agreement was entered into between the Petitioner and the NSEZ on 9th December 2006 for conversion of the Petitioner from a DTA unit to a 100% EOU. Thereafter an application was made by the Petitioner on 18th September 2009 for grant of a licence for Private Customs Bonded Warehouse under Section 58 of the Customs Act, 1962 ('CA'). This licence was issued on 13th May, 2010.

3. It is stated that a search was conducted in the premises of the Petitioner at NOIDA by the Directorate of Revenue Intelligence ('DRI') on 13th February, 2014 and certain documents were seized. It is claimed that the Managing Partner of the Petitioner was compelled to deposit Rs.30 lakhs with the Customs Department i.e. Rs.20 lakhs on 13th February, 2014 and Rs.5 lakhs each on 19th February, 2014 and 21st February, 2014.

4. Nearly two years after the search proceedings, the impugned SCN dated

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18th March, 2016 was issued to the Petitioner and its partners (co-noticees) seeking to recover a sum of Rs.18,24,138 as the amount of Duty Drawback refunded to the Petitioner in 2007-08 and 2008-09 on the basis that a 100% EOU cannot claim any duty drawback.

5. As far as the present petition is concerned, what is relevant is that on 22nd April, 2016 a letter was written by counsel for the Petitioner to the Adjudicating Authority i.e. Additional/Joint Commissioner of Customs (Exports) requesting for some time to answer the allegations imputed against the Petitioner and its Partners. A prayer was made for grant of inspection of the investigation file and the non-relied upon documents (Non-RUDs).

6. By a letter dated 9th May, 2016, the Adjudicating Authority informed the Petitioner and the co-noticees that the request for inspection of the investigation file and the non-RUDs has been rejected and that the personal hearing in the matter has been fixed at 12.30 p.m. on 20th May, 2016. It is in those circumstances that the present petition was filed.

7. By an order dated 20th May, 2016 while directing notice to issue to the Respondent, the Court required Mr Satish Kumar, learned Senior Standing Counsel for the Respondent, to seek instructions on providing inspection to

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the Petitioner of the investigation file and the non-RUDs. The further proceedings pursuant to the impugned SCN were stayed.

8. Today Mr Satish Kumar states that he has instructions to file a counter affidavit. He sought more time for that purpose. He also referred to para 24 of the SCN which reads as under:

> "NON RUDs may be collected, if required, by the notice/notices from the office of the Director General, Directorate of Revenue Intelligence, 7thFloor, 'D' Block, Indraprastha Bhavan, I.P. Estate, New Delhi during office hours on any working day with prior appointment."

9. The Court is of the view that granting time to file counter affidavit will result in the adjudication proceedings being delayed further. The Court, at this stage, does not wish to entertain the prayer of the Petitioner to quash the SCN. The Court is of the view that the SCN will have to be adjudicated on merits. It will be open to the Petitioner to raise all possible defences in the adjudication proceedings.

10. The Court, however, is concerned that a fair procedure should be followed by the Adjudicating Authority. Having permitted the Petitioner in Para 24 of the SCN to collect the non-RUDs from the office of the DRI, after issuing notice "on any working day with prior appointment", it is

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surprising that by the impugned letter dated 9th May 2016, the Adjudicating Authority informed the Petitioner that its request for inspecting the non-RUDs is rejected. Clearly there has been a change of mind by the Adjudicating Authority on this aspect. The fact that no reasons have been given in the said letter dated 9th May, 2016 for such rejection makes it even more suspect.

11. As far as the other request for inspection of the investigation file is concerned, Mr Satish Kumar points out that there could be documents in the investigation file which cannot be shown to the Petitioner and other co-notices on account of their nature. The Court is of the view that this by itself cannot be a reason to refuse inspection of the investigation file. If there are documents in the investigation file which, according to the Adjudicating Authority, cannot be shown to the Petitioner, the Adjudicating Authority should give reasons in writing for refusing inspection of such documents.

12. In the circumstances, the Court is of the view that the rejection of the Petitioner's request by the impugned letter dated 9th May, 2016 by the Adjudicating Authority is untenable in law and is, accordingly, set aside.

13. The following directions are, accordingly, issued:

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Compendium: RUDs and natural justice | page 113 of 465 Back to Index

(i) Within a period of two weeks from today the Adjudicating Authority will ensure that the DRI returns to the Petitioner the non- RUDs in terms of Para 24 of the SCN.

(ii) Within the same period the Adjudicating Authority will provide the Petitioner inspection of the Investigation File and wherever any portion of the file cannot be shown to the Petitioner and/or co-noticees, the Adjudicating Authority will record the reasons in writing for such refusal, and provide a copy of the reasons to the Petitioner forthwith.

(iii) Within four weeks of being granted inspection of the investigating file, the Petitioner and other co-notices will file their respective replies to the SCN and not seek any further time for that purpose.

(iv) The Adjudicating Authority will endeavour to complete the adjudicating proceedings within a period of six months thereafter.

14. The writ Petition and application are disposed of in the above terms.

15. *Dasti*.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 26, 2016/pkv

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CASE 11 OF 35

High Ground Enterprises Ltd. v. Union of India & Anr.

Court	High Court of Bombay
Bench	M.S. Sanklecha and Nitin Jamdar, JJ.
Date	14.08.2019
Case no. / citation	Writ Petition No. 8075 of 2019

Holding in brief

Section 67(5) CGST Act gives the person from whom documents are seized the right to take copies. The Department's note that giving copies would prejudice the investigation merely repeated the section and was made later; continued withholding became unreasonable. Mandamus to give copies within two weeks.

Paragraphs highlighted

Paras 15, 17, 18 and 19. Highlighted passages are on compendium pages 125-127.

Status

Final order; rule made absolute.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 116.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8075 OF 2019

High Ground Enterprises Ltd.,
Having its office at
2, Om Heera Panna Mall,
2nd Floor, Oshiwara,
Andheri (West), Mumbai-400 053. … Petitioner.

V/s.

1. Union of India
(Through the Secretary,
Ministry of Law and Justice,
Department of Legal Affairs,
Branch Secretariat, Aaykar
Bhavan Annexe, 2nd Floor,
New Marine Lines, Mumbai- 20.

2. Office of the Directorate General of GST
Intelligence, Mumbai Zonal Unit,
NTC House, 3rd Floor,
15, N.M. Road, Ballard Estate,
Mumbai- 400 001. … Respondents.

Dr.Sujay Kantawala with Mr.Sujeet Sahoo and Ms.Poorva Patil i/b. Brijesh Pathak for the Petitioner.

Mr.Pradeep S. Jetly with Mr.Jitendra B. Mishra for the Respondents.

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CORAM : M.S. SANKLECHA AND
NITIN JAMDAR, JJ.

DATE : 14 August 2019.

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Taken up for final disposal.

2. The Petitioner has sought to question the refusal by the Officers of the Director-General of GST Intelligence, Mumbai to supply documents to the Petitioner seized by the officers. The Petitioner has also sought a direction to the Respondents to hand over copies of the documents seized.

3. The Petitioner- High Ground Enterprises Limited is a company listed on the Bombay Stock Exchange and National Stock Exchange of India. The Petitioner has over 10,000 shareholders. An intelligence input was received from the Director-General of GST Intelligence, Calcutta regarding transactions allegedly in connection with fraudulent affirmation and utilization of input tax credit by various firms on the strength of invoices allegedly issued by non-existing entities. An inquiry was initiated by the Respondent- GST Intelligence, Mumbai against the Petitioner. A search was conducted

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on 9 January 2019 and 10 January 2019 and records and documents were seized as enumerated in Panchanama dated 9/10 January 2019. During the investigation, summons were issued to the Petitioner on 9 January, 11 January and 21 January 2019. Initially, the Petitioner did not appear, however, subsequently appeared pursuant to the summons. The Petitioner on 2 February 2019 requested to hand over the documents seized under the Panachanma. The documents were not handed over.

4. The Petitioner, in the meanwhile, received notices from the Bombay Stock Exchange and the National Stock Exchange in connection with the non-submission of financial results. The Statutory Auditor also requested the Petitioner to supply the necessary documents. As per Regulation 33 of the SEBI (Listing Obligation and Disclosure Requirement) Regulation, 2015 (Regulations of 2015), every listed company must submit quarterly, half-yearly and yearly financial results with the Stock Exchange within 45 days from the end of the quarter and 60 days in case of the financial results for the March-end quarter.

5. The Bombay Stock Exchange issued a notice to the Petitioner imposing a penalty of Rs.1,06,200/- payable till 17 June 2019 and thereafter Rs.5,000/- per day. Since the documents were not given to the Petitioner and the Petitioner is facing coercive action from the Stock Exchange, the Petitioner has filed the present petition

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seeking direction to the respondent authorities to hand over the copies of the documents seized.

6. The petition came up on the board on 1 August 2019, and it was adjourned at the request of the Respondents. The Respondents through Hrishikesh Utpat, Deputy Director, Group D from the office of Directorate General of Goods and Service Tax Intelligence, Mumbai has filed two affidavits, one tendered in the Court today and the other dated 31 July 2019.

7. We have heard Dr.Sujay Kantawala for the Petitioner and Mr.Pradeep Jetly for the Respondents.

8. The Petitioner has clarified it in the oral arguments that the Petitioner seeks copies of the documents seized by the respondent-authorities and not the originals thereof. According to the Petitioner, even if the copies of the documents are given at this stage, it will suffice the purpose of the Petitioner for making statutory compliance as per Regulations of 2015. The Petitioner submits that grave prejudice is caused to the Petitioner because the documents were not available to the Petitioner, and such position cannot continue. The Respondents through the affidavit and oral arguments contended that it is open to the Chartered Accountant of the Petitioner to take inspection of the record. It is contended that handing over documents at this stage will gravely prejudice the investigation.

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According to the Respondents, that the investigation is at the sensitive stage and considering the complexity, it would be prejudicial to the investigation, if the copies are given to the Petitioner. The stand taken on the affidavit is that the Petitioner is likely to manipulate the documents and alert its associates and stall the progress of the investigation.

9. The power of the authorities to carry out an investigation, search and seizer is conferred under the provisions of the Central Goods and Services Act, 2017. The Chapter-XIV deals with inspection, search, seizure and arrest. Power of inspection, search and seizure is provided in section 67. Section 68 of the Act deals with the inspection of goods in movement. Section 69 confers the power of arrest on the authorities. The Officer under the Act is empowered to issue summons to give evidence and produce documents, and as provided in section 71 of the Act, the Officer under the Act as specified would have access to any place of business to carry out inspection, audit and survey. The parts of Section 67 of the Act material for the present petition are reproduced as under:

> *"67. **Power of inspection, search and seizure.**- (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—*
>
> *(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this*

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Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided *that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

Provided further *that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.*

(3) The documents, books or things referred to in

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sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) ….. …..
(7) ….. …..
(8) ….. …..
(9) ….. …..
(10) ….. …..
(11) ….. …..
(12) ….. …..

Thus, a Proper Officer not below the rank of Joint Commissioner, if he has a reason to believe that any person liable to pay tax has suppressed any transaction or has claimed input tax credit in excess of

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his entitlement or has engaged in the business of goods which have escaped payment of tax, he may authorize the officer to inspect the places of business of such person. Section 67(2) authorizes the Proper Officer to carry out search and seizure of goods, documents, books or things. The second proviso to section 67(2) states that the documents or books so seized shall be retained by the said officer only for so long as may be necessary for their examination or for inquiry or proceedings under the Act. Section 67(3) provides that the documents, books or things referred to in sub-section (2) which have not been relied upon in support of notice under the Act have to be returned to such person within a period not exceeding thirty days.

10. The scheme of Section 67, more particularly sub-section (5) thereof, suggests that as far as copies of the documents so seized, a person from whose custody such documents have been seized will have right to get the copies thereof. This right is qualified with a contingency where giving such copies will prejudicially affect the investigation. The legislative intent as far as the documents and books which are seized under section 67(2), is clear. The originals of documents or books so seized must be kept by the officer only for a period as may be necessary for an inquiry. Meaning, such documents or books should not be needlessly kept in custody which will otherwise gravely prejudice the person from whose custody the said documents were seized. As can be seen from section 67(5) that if the originals cannot be returned, at least the person is entitled

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to receive copies thereof. The idea is that businesses should not be subjected to needless harassment.

11. There are two facets of the opinion of the Proper Officer as contemplated under section 67(5) of the Act. Firstly, the opinion, which would be a decision, should be reflected in the record. The opinion cannot be a mere *ipsi-dixit* of the Proper Officer. There must be cogent reasons to withhold giving of copies to the person. A mere statement that it will prejudicially affect the investigation would be only chanting the language of the section.

12. With this statutory scheme, we will examine the merits of the stand of the Respondents. The Respondents have stated that according to their intelligence input, there may be some shell companies involved in evasion of tax. Then the Respondents state that if the copies are given, they may be manipulated or fabricated to evade the payment of tax. It is stated that most of the documents that have been seized are photocopies and not the original. Then it is stated that if the copies of the documents are given to the Petitioner, such copies will be used to alert its associates and, lastly which is a contradiction, that soft copies are available with the petitioner.

13. An offer is made by the Respondents that the Chartered Accountant of the Petitioner can visit the office of the Respondents, and there is no need to give such copies. Section 67(5) of the Act creates a right to receive the copies by a person from whose custody

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the documents are seized. The said person need not give justification why he needs the copies of the documents seized. Therefore, the argument that the Petitioner must show a cogent reason why the Petitioner needs copies and only an inspection by the Chartered Accountant will suffice has to be rejected.

14. As regards the tampering of evidence is concerned, it is not explained how, when the originals are with the respondent-authorities, the said documents will be tampered by the Petitioner. Second, if the soft copies are available with the Petitioner, the argument that if the copies are given, now the Petitioner will alert its associates is also not explained.

15. The counsel for the Respondents shown us the noting in in the record by the Proper Officer. We have gone through the Note. The Note states that giving of copies would prevent investigation. This is only a reproduction of the language of the section. Further, the Note is prepared on 7 August 2019, i.e. one month after the present writ petition was filed. Therefore, first, no reasons are given in the said note as to how giving of copies will prejudice the investigation and second, the record is created subsequently.

16. We also note the averment in the affidavit filed by the Respondents wherein it is sought to be suggested that the Petitioner did not co-operate by answering the summons. The counsel for the Petitioner pointed out to us that the Petitioner attended subsequently.

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However, the said fact has not been mentioned in the affidavit of the Respondents. This is not an innocuous mistake. It appears that partial averments are made to give different colour to the adjudication. The authorities ought to place all the material facts before the Court.

17. Last, in the light of the provision of section 67(5) of the Act creating right in the person, the denial of copies must be a reasonable action. The legislative intent is clear that the documents or books seized must not be kept in the custody of the officer for more than the period necessary for its examination and copies thereof need to be given to the person from whose custody the said documents or books are seized. The reasonableness of the action depends on the facts of each case. If the right to get copies of the documents and the power of the authorities to refuse the same has to be balanced, then the balance may shift by the passage of time and continuing withholding of copies can become unreasonable assuming it is justified at the inception. The documents were seized in January 2019, and the petition is being heard in the middle of August 2019. The prejudice to the Petitioner has been demonstrated.

18. In these facts and circumstances, we are of the opinion that refusal by the respondent- authorities to give copies of the documents to the Petitioner which are seized under Panchanama dated 9/10 January 2019 is not justifiable and the Petitioner is entitled to the mandatory direction as prayed for.

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19. In the circumstances, we make the Rule absolute by issuing a mandamus to the respondent- authorities to furnish copies of the documents seized under Panchanama dated 9/10 January 2019 within two weeks. The period of two weeks will commence from the date this order is uploaded on the server of this Court.

20. The writ petition is accordingly disposed of in the above terms.

NITIN JAMDAR, J. M.S. SANKLECHA, J.

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CASE 12 OF 35

J. Sheikh Parith v. The Commissioner of Customs (Seaport - Exports) & Anr.

Court	High Court of Madras
Bench	C. Saravanan, J.
Date	13.12.2019
Case no. / citation	Writ Petition No. 29526 of 2012

Holding in brief

Challenge to a DRI notice and a demand for more documents. The Department was directed to comply strictly with an earlier order and return documents not relied on; the petitioner had acknowledged the relied-upon documents and was directed to file the reply within a fixed time, with the adjudication to follow.

Paragraphs highlighted

Paras 12 to 14. Highlighted passages are on compendium pages 134-135.

Status

Final order; writ petition disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 129.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition No.29526 of 2012

J.Sheikh Parith ... Petitioner

Vs.

1.The Commissioner of Customs,
(Seaport – Exports)
Custom House, Rajaji Salai,
Chennai – 600 001.

2.The Additional Director General,
Directorate of Revenue Intelligence,
South Zonal Unit, 27, Adarsh Towers,
G.N.Chetty Road, T.Nagar,
Chennai – 600 017. ... Respondents

(R2 impleaded as per order dated 24.10.2019
made in CMP.No.29666 of 2019 in
WP.No.29526 of 2012 by ASMJ)

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records connected with impugned notice of the respondent dated 19.10.2012 issued in F.No.CAU/DRI/CHENNAI/2/2012, quash the same, holding the impugned notice to be unlawful and against the principles of natural justice and consequently direct the respondent to provide the documents and details as sought for by the petitioner vide his letter dated 19.04.2012.

For Petitioner : Mr.Vijaynarayanan,
Senior Counsel for
Mr.N.Viswanathan

For Respondents : Mrs.Aparna Nandakumar CGSC
for R1

: Mr.V.Sundreswaran, SPC for R2

ORDER

In the present writ petition the Petitioner has challenged the impugned hearing notice dated 19.10.2012 issued by the

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Appraiser of Customs fixing personal hearing in Show Cause Notice No. F.No.VIII/48/28/2011-DRI dated 22.12.2011 before the 1st respondent on 02.11.2012. The said show cause notice was issued by the 2nd respondent Directorate of Revenue Intelligence to the petitioner, M/s.Majestic Impex and M/s.SSP Enterprises and two others.

2. At the time of receipt of the aforesaid show cause notice, the petitioner had also acknowledged having received all the relied upon documents. The case against the petitioner was that he used the Import-Export Code of M/s.Majestic Impex and M/s.SSP Enterprises and had cleared several consignments of goods by resorting to mis-declaration in the value of the imported goods. The show cause notice called upon the petitioner and other notices to show cause as to why the classification adopted, the exemption claimed and the value declared should not be rejected and to show cause as to why differential duty should not be demanded and why penalty should not be imposed on the notice.

3. It is not necessary to delve into the merits of the allegations in the show cause notice for the purpose of this Writ Petition. On 19.04.2012, the petitioner in his capacity as the unauthorised signatory of M/s.SSP Enterprises requested for 3 months to give reply and also called upon the 1st respondent to furnish the documents for preparing the reply even though all the relied upon documents were acknowledged as having received by the petitioner in his individual capacity as the authorised representative of measures SSP enterprises and the clearing and forwarding agents of the petitioner.

4. On 13.10.2012, the present writ petition was filed by the petitioner. On 07.11.2012 the other notice namely M/s. Majestic Impex filed W.P.No.29833 of 2012 for an identical relief as in the present writ petition. The said writ petition also was filed by the petitioner in his capacity as the authorised signatory of M/s.Majestic Impex. The said writ petition was dismissed by an order dated 07.11.2012.

5. Thereafter, the petitioner filed yet another writ petition in WP.No.899 of 2013. In the said writ petition the petitioner prayed for a direction to direct the 1st respondent to furnish certain documents as detailed by M/s.SSP enterprises vide letter dated 19.4.2012 for a property adjudication of the aforesaid show cause notice. By an order dated 22.12.2014, the said writ petition was also disposed with the direction to the respondents herein to furnish the documents as detailed in the said order. The operative portion of the said order reads as under:-

4.After hearing the submissions of the learned

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counsel for the parties and perusing the materials on record, the dispute, which has arisen in this writ petition is confined only to the following documents mentioned by the first respondent in his order and the learned counsel for the petitioner submits that in all other aspects, the petitioner is not pressing for the request made for. Therefore, the respondents are directed to comply with the directions issued by this Court in this order which have been specifically indicated against each document in the tabulated form given below.

Serial Number	Documents sought	Directions Issued
3		The respondent/ department is directed to give a copy of the details available in 2 GB Pen Drive apart from the documents which have already been furnished.
9		The respondent/department is directed to provide copy of the letters sent by the department to the State Bank of Travancore, Kuralagam Branch.
21		The respondent/department is directed to furnish Photostat copies of licences and the petitioner shall remit the cost for such Photostat copies.
26		The respondent/department is directed to furnish Photostat copies of all documents on the petitioner remitting the appropriate charges.
28		The respondent/department is directed to furnish Photostat copies of all documents and the petitioner shall remit appropriate charges.

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Serial Number	Documents sought	Directions Issued
32		Proceedings in Show Cause Notice, the statement of all Inspectors (Examiners),Custom House, Chennai recorded under Section 108 of the Customs Act,1962 and the same shall be furnished on payment of charges.

Regarding Sl.Nos.38 to 43, the petitioner would contend that the copies of the bill of entries, Examination reports, Extracts, Images /print outs of 'out of charge' order have already been seized by the officers and no records are with the petitioner. Therefore, the petitioner seeks a direction to the respondent to furnish the documents and details to the petitioner.

5.In the light of the above, the respondent/department is directed to furnish copies of the bills of entry, examination reports, extracts/images/printouts of 'out of charge' order and examination report in respect of the concerned bill of entry on payment of charges. In all other aspects, the impugned order stands confirmed and the writ petition is allowed only to the extent indicated in respect of documents mentioned in the above tabulated statement and Sl.Nos.38 to 43.

6.In the result, the writ petition is partly allowed and the respondent is directed to comply with the direction issued in the above tabulated statement and in paragraph 5 above and in all other aspects, the impugned order stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

7.The petitioner shall obtain the documents from the respondent/department which shall be furnished within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the petitioner is directed to submit his explanation to the show cause notice within a period of four weeks thereafter. The respondent/department is directed to adjudicate the matter after affording a personal hearing and the petitioner is directed to co-operate in the

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adjudication proceedings without seeking for any adjournments.

6.It is submitted that the said order dated 22.12.2014 has not been fully complied till date by the 2nd respondent and therefore the petitioner has not given a reply so far to the show cause notice on merits. The documents which were directed to be furnished to the petitioner are documents which are not relied in the aforesaid show cause notice. According to the petitioner they are material and relevant for preparing their reply to the said show cause notice.

7.Petitioner further submits that the 2nd respondent had recorded statements from several officers of the customs department but has not furnished the same and therefore in absence of these documents, the petitioner is unable to effectively defend himself in the show cause notice.

8.Petitioner further submits that during the interregnum section 28 of the Customs Act, 1962 has been amended with effect from 28.3.2018 with the insertion/sub-stitution of sub-clause (9) to Section 28 of the Customs Act, 1962 and therefore Show Cause Notice No. F No.VIII/48/28/2011-DRI dated 22.12.2011 issued by the 2nd respondent which was made answerable to the 1st respondent is deemed to have abated in absence of adjudication and therefore prays for a declaration declaring the show cause proceeding as having abated.

9.Heard Mr.Vijay Narayan, the learned Advocate General for the petitioner duly instructed by Mr.N.Vishwanathan the learned counsel for the petitioner, Mrs.Aparna Nandakumar the learned counsel for the 1st respondent Commissioner of Customs and Mr.V.Sundereswaran, Senior Panel Counsel for the 2nd respondent Directorate of Revenue Intelligence (DRI).

10.At the outset, it should mentioned that no writ petition can be entertained to quash a hearing of notice as it is not an order. At the same time, it should be remembered that the 2nd respondent as an investigative agency cannot retain the seized documents. Once its completes investigation and issuing of Show Cause Notice, it should return the same or give back photo copy to the person to who it belonged.

11.During the interregnum several correspondences have been sent since the filing of the present writ petition to thwart the adjudication of the show cause notice by the 1st respondent. Some of the correspondence are after filing of the present petition during its pendency. Details of this correspondence are as under:-

03.11.2015	Copy of the 2nd respondent letter sent to the petitioner along with documents in pursuance with Hon'ble High Court order in W.P.No.899 of 2013 with Postal Receipt.

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06.11.2015	Copy of the 2nd respondent letter sent to the petitioner along with documents in pursuance with Hon'ble High Court order in W.P.No.899 of 2013 with Postal Receipt.
22.12.2016	Letter sent by the 1st Respondent for personal hearing.
26.12.2016	Reply letter sent by the petitioner in pursuance to the personal hearing letter dated 22.12.2016 requesting document and refusing to appear for personal hearing.
21.08.2017	Letter sent by the 1st Respondent for personal hearing.
26.08.2017	Reply letter sent by the petitioner in pursuance to the personal hearing letter dated 22.12.2016 requesting document and refusing to appear for personal hearing.
08.04.2019	Copy of letter sent by the 1st respondent to the 2nd respondent requesting proof of sending the documents.
15.04.2019	Copy of letter sent by 2nd respondent.
20.06.2019	Copy of letter sent by the 1st respondent to the 2nd respondent requesting 2GB pen drive.
04.07.2019	Copy of letter sent by the 2nd respondent to the respondent in pursuance to 2GB.
14.08.2019	Copy of letter sent by the 1st respondent to the 2nd respondent for documents for adjudication.
25.09.2019	Copy of letter sent by the 2nd respondent to the 1st respondent in pursuance to 2GB.

12.As per Circular No. 394/15/88-Cus A.S dated 13.6.1996 and Circular No. 207/09/2006-CX, the 2nd respondent was required to return the documents not relied upon/considered useful from any angle to the parties concerned. The 2nd respondent however failed to do so. Despite order dated 22.12.2014 in W.P.No. 899 of 2013, barring few documents, not all the documents directed to be furnished have been supplied. Since the 2nd respondent has not fully complied with the said order, I am of the view, the 2nd respondent should be directed to strictly comply with the said order in letter and spirit within a period of 30 days of receipt of this notice. The petitioner thereafter shall go to the office of the 2nd respondent on the 1st instance on 30th/31st of December 2019 to collect the documents. The 2nd respondent shall hand over rest of the documents in compliance of the order dated 22.12.2014 without any reservation.

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13.The petitioner and other notices shall thereafter file their reply to the Show Cause Notice No.F.No.VIII Dated 22.12.2011 within a period of 90 days i.e latest by 31st March, 2020. Under no circumstances any extension of time for filing the reply shall be entertained as the adjudication of the show cause proceeding has been considerably delayed by about seven years due to pendency of the present writ petition. The 1st respondent shall thereafter proceed to adjudicate the Show Cause Notice No.F.No.VIII Dated 22.12.2011 within a period of six months from the date of receipt of a copy of this order.

14.All the defences raised in the present writ petition including the submission regarding abatement of show cause proceedings in the light of section 28 (9) Of the Customs Act, 1962 is left open to be decided by the 1st respondent.

15.The present Writ Petition stands disposed in terms of the above observations. No costs.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

drl

To
1.The Commissioner of Customs,
(Seaport - Exports)
Custom House, Rajaji Salai,
Chennai - 600 001.

2.The Additional Director General,
Directorate of Revenue Intelligence,
South Zonal Unit,
27, Adarsh Towers, G.N.Chetty Road,
T.Nagar, Chennai - 600 012.

+2cc to Mr.N.Viswanathan, Advocate, S.R.No. 103895
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No. 104153

W.P.No.29526 of 2012

GN(19/12/2019)

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CASE 13 OF 35

State of U.P. v. Sudhir Kumar Singh & Ors.

Court	Supreme Court of India
Bench	R.F. Nariman, Navin Sinha and K.M. Joseph, JJ.
Date	16.10.2020
Case no. / citation	2020 INSC 603; Civil Appeal No. 3498 of 2020

Holding in brief

Tender cancellation case, widely cited for the principles of natural justice. Breach of audi alteram partem does not by itself prove prejudice; the prejudice must be real and shown on the facts, and the Court does not pass futile orders where facts are admitted. On the facts the bidder had been left in the dark and prejudice was shown. Not a tax case.

Paragraphs highlighted

Five-point summary of principles and its application (unnumbered paragraphs). Highlighted passages are on compendium pages 185-188.

Status

Final judgment; appeals partly allowed.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 137.

2020 INSC 603

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3498 OF 2020
(ARISING OUT OF SLP (C) NO. 5136 OF 2020)

STATE OF U.P. …APPELLANT

VERSUS

SUDHIR KUMAR SINGH AND ORS. …RESPONDENTS

WITH
CIVIL APPEAL NO. 3499 OF 2020
(ARISING OUT OF SLP (C) NO. 7351 OF 2020)

AND
CIVIL APPEAL NO. 3500 OF 2020
(ARISING OUT OF SLP (C) NO. 7364 OF 2020)

J U D G M E N T

R.F. Nariman, J.

1. Leave granted.

2. An e-tender notice was issued on 06.01.2018 by the U.P. State Warehousing Corporation ("**Corporation**") for unloading/loading of foodgrains/fertilizer bags from/into railway wagons, trucks etc., stacking the foodgrains/fertilizers in bags, bagging, weighment, standardisation, cleaning of foodgrains/fertilizers etc. and transporting of

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foodgrains/fertilizers etc. from Railway Station to Corporation godowns or *vice versa* or transporting them from any place to any other place for the Vindhyachal (Mirzapur) Region. Ten days later i.e. on 16.01.2018, the said tender was cancelled by the Corporation due to "administrative reasons". On 01.04.2018, an e-tender was again published in the same terms, and so far as the region Vindhyachal (Mirzapur) is concerned, it was for the "appointment of Handling and Transport Contractor for food grain in FCI and alleged material etc." of the following depots/centres of Uttar Pradesh for a period of two years:

Sl. No.	Name of Depot/Centre	Workable capacity (in M.T.)	Estimated annual value of contract	Earnest money @20% security amount through RTGS/NEFT	Security deposit (in rupees)
1.	Mirzapur	8430	50000000.00	1000000.00	5000000.00
2.	Bhawanipur PEG-1	30000	60000000.00	1200000.00	6000000.00
3.	Bhawanipur PEG-II	10000	10000000.00	200000.00	1000000.00
4.	Tendu (Sonbhadra)	61400	9000000.00	180000.00	900000.00

3. Technical bids for these four centres were opened on 17.04.2018. Price bids of technically qualified bidders were then opened on 23.04.2018. The price bids that were received, so far as these four centres were concerned, were as follows:

"**PEG Bhawanipur-I Centre**

Serial No.	Bidder	Rate
1.	Maa Bhawani Transport	222% ASOR
2.	Iqbal Ahmad Ansari	154% ASOR
3.	Suresh Singh	174% ASOR

PEG Bhawanipur-II Centre

Serial No.	Bidder	Rate
1.	Maa Bhawani Transport	198% ASOR
2.	Iqbal Ahmad Ansari	153% ASOR
3.	Suresh Singh	174% ASOR

Mirzapur Centre

Serial No.	Bidder	Rate
1.	Maa Bhawani Transport	219% ASOR
2.	Iqbal Ahmad Ansari	139% ASOR
3.	Suresh Singh	134% ASOR
4.	Shaquil Ahmad	248% ASOR

Tendu (Sonbhadra) Centre

Serial No.	Bidder	Rate
1.	Maa Bhawani Transport	180% ASOR
2.	Dharam Raj Singh	300% ASOR
3.	Sonbhadra Transport	Not specified in words and numbers
4.	Manisha Engineering	225% ASOR
5.	Arjun Singh	25% ASOR

(Where ASOR means Above Schedule of Rates)"

4. On 04.05.2018, the then Managing Director of the Corporation cancelled the aforesaid tender apparently on the ground that it was "impractical" to go ahead with such tender. As a result, on 01.06.2018, for the same region, the aforesaid tender was reissued for the same workable capacity and estimated annual value of the contract. It may be added that each of these tenders were for a period of two years.

5. Sudhir Kumar Singh, Respondent No.1 in the appeals arising out of SLP (C) No. 5136 of 2020 and SLP (C) No. 7351 of 2020, was declared as the successful bidder for the Bhawanipur-I centre, at the rate of 341% ASOR, the other successful tenderers for Mirzapur, Bhawanipur-II and Tendu (Sonbhadra) being at 314%, 338% and 290% ASOR respectively. On 13.07.2018, an agreement was entered into between the Corporation and Respondent No.1 for execution of the work under the tender, which began on and from that day, and continued for a period of over one year.

6. Meanwhile, on 27.05.2019, two complaints were made by one Shri Pramod Kumar Singh of the Purvanchal Trucker Owner's Association to the Principal Secretary of the State of U.P. regarding financial irregularities that occurred in the issuance of the e-tender notice dated 01.06.2018. These complaints were then forwarded by the Principal Secretary of the State of U.P. to the Managing Director of the Corporation by a letter dated 30.05.2019. The said letter, insofar as Respondent No.1 is concerned, read as follows:

> "Shri Pramod Kumar Singh should analyse two enclosed complaints dated 27.05.2019 of Truck Owners Association wherein loss of Crores to Corporation is shown due to serious financial irregularities caused in handling and transport contracts in Vindhyanchal Division.
>
> *xxx xxx xxx*
>
> Tendering was done in Vindhyanchal Division on 16.04.2018, wherein low rate of tenders were received. Issued tenders are cancelled on 05.05.2018 without

> telling any reason and tender of centres cancelled on 16.06.2018 were re-tendered wherein rates are too high in new tenders than older one and by allotting work on higher rates work is being done.
>
> Kindly assure providing report within five days in respect of aforesaid and in respect of all points mentioned in enclosed letters."

7. As a result of this letter, the Managing Director of the Corporation held an *ex parte* enquiry into the matter, and insofar as Respondent No.1 was concerned, the Managing Director went into the cancellation of the previous tender dated 01.04.2018, and into the comparative details of rates received for these four centres earlier, as compared to the rates of the same tendered quantity of the tender dated 01.06.2018, and found the latter rates to be extremely high. In his report dated 14.06.2019, he therefore ultimately concluded:

> "It is mentionable that cancellation of e-tendering process done earlier through Advertisement No.1.1001.23318 dated 01.04.2018 on the ground that received minimum rates are impractical is not acceptable in any circumstance. In this respect, for getting e-tendering process done the committee constituted at Division Level considered PEG Tendu (Sonbhadra) Centre only as impractical whereas the Head Office accepted it as it is in respect of all centres. As far as question of hiding of fact regarding forfeiture of security deposit by Uday Construction or application filed for producing the same are concerned, then in this respect it is to be known that Uday Construction applied only for PEG Tendu through Advertisement No.1.1001.23318 dated 01.04.2018. Therefore, on this ground rejection of bids received for other centres was prima facie not justified."

8. Meanwhile, the Commissioner, Vindhyachal Mandal Mirzapur, also conducted an *ex parte* investigation and found in his report dated 29.06.2019 as follows:

> "1. State regional manager Sh. Madhukar Gupta has mentioned in his letter no. R.BH.N/dated 26-05-2018 forwarded to State General Manager (finance) Uttar Pradesh State Warehousing Corporation that committee of e-tendering has been formed only for the purpose of formalities. It is cleared from examining the paragraph that formality has been done in the tender. On 12-07-2018 the state manager gave the recommendation of acceptance and on 13-07-2018 Uttar Pradesh State Warehousing Corporation gave acceptance. On 13-07-2018 Sh. Madhukar Gupta State Regional Manager, Uttar Pradesh State Warehousing Corporation Vindhyachal gave appointment order to the concerned contractors. Hereby uncommon vigilance has been shown in entire procedure.
>
> 2. Regional Manager, Uttar Pradesh State Warehousing Corporation Sh. Anuj Shukla, computer consultant was got involved by Sh. Madhukar Gupta which is not appropriate. It is objectionable in keeping contract work in bid is objection.
>
> 3. Condition was kept on to participate only to the registered contractors which is objectionable. Due to, only participation of registered contractor, no contest took place amongst the contractors. Because of which rate was obtained at manifold high rate. Whereby damaged was caused to department.
>
> 4. Regional Manager in his letter no. R.B.N/284/dated 12-07-2018 which is addressed to Managing Director Uttar Pradesh State Warehousing Corporation Lucknow. For determined rate to 314 percent, 341 percent, 338 percent, and 290 percent at high rate conformation of recommendation of appointment of regular contractors have been given for work of Indian Fertilizer Corporation Handling and Transport. It is mentioned that despite the high rate from determined rate regional manager neither any market survey was conducted regarding high rate

nor he mentioned in his letter and he recommended the acceptance irresponsibly. Hence Sh. Madhukar Gupta State Regional Manager has not followed his duty and responsibility and he is responsible for high rate and acceptance without any reason.

5. Even corporation Headquarter did not deem fit to take any action regarding high rate from determined rate. What was examined by Headquarter it is not cleared.

6. In this regard categorically it is not possible to determine the financial loss since neither in this case, opportunity to contest has been given and nor market survey has been conducted. On the basis of that formality rate can be determined. Damage has been surely caused. But it cannot be explained. Record is sent for perusal and necessary action."

9. Given these two reports, the Special Secretary, Government of U.P. wrote a letter dated 16.07.2019 to the Managing Director, in which the Managing Director's report dated 14.06.2019 was referred to, and concluded:

> "In this, the role of Officer of Regional Level (Vindhyachal Division) and accepting Officer and erstwhile Managing Director and officers concerned with Headquarter, also appears to be doubtful.
>
> So, I have been instructed to say that you by doing enquiry of matter at your own level, the financial loss caused to the Government and after evaluating the same, shall take action to recover the said amount from concerned Contractor and concerned Officers. The Officers/Employees against whom any previous departmental proceeding is pending, in respect of them by including these charges as additional Charge Sheet action shall be taken and against officers/employees found guilty in the matter against whom no proceedings are pending, proceeding shall be done by marking them.
>
> The tenders of abovementioned firms which are granted contrary to rules, by cancelling them the appointment of

> contractors be done through e-tendering again for handling and transport work of concerned Warehouses.
>
> Said proceedings be done as soon as possible and the action taken shall be informed to the Government."

10. Pursuant to this letter, the aforesaid tenders were then cancelled on 26.07.2019, and disciplinary proceedings were taken against certain employees of the Corporation. These proceedings led to a report dated 18.10.2019, in which the difference between the earlier rates and the present rates were gone into, and it was found that an excess of INR 4,40,05,369 had been paid relative to what was sanctioned previously – this amount being the financial loss suffered by the Corporation.

11. Meanwhile, Respondent No.1 filed Writ Petition no. 25389 of 2019 in July 2019 before the High Court of Judicature at Allahabad, in which he challenged the "illegal and arbitrary" termination of the contract with the Corporation after successful completion of over one year of a two-year term, and prayed for the setting aside of the Corporation's cancellation order dated 26.07.2019 of the tender dated 01.06.2018.

12. By the judgment dated 11.12.2019 in this Writ Petition, which is impugned in the appeals arising out of SLP (C) No. 5136 of 2020 and SLP (C) No. 7351 of 2020, the High Court, after setting out the prayer in the Writ Petition, set out four questions that arose before it as follows:

> "(a) Whether the two enquiry reports are procedurally defective inasmuch as the findings returned thereunder are based upon no material and hence perverse;

(b) Whether the respondent Managing Director was justified in cancelling the written agreement with the petitioner after a lapse of a year, without putting him to notice;

(c) Whether being an autonomous body, Corporation could not have been directed to take action in particular manner and Managing Director was not justified in cancelling the agreement under an executive fiat of Special Secretary; and;

(d) Whether the order passed by Managing Director is vitiated for bias as he himself had been Inquiry Officer and without inviting the petitioner to explain in his defence he himself conducted the inquiry and then on the basis of report prepared by him, he proceeded to cancel the agreement."

13. The High Court concluded that since the entire proceedings were conducted behind the back of Respondent No.1, and considering that the tender notice dated 01.06.2018 had never been challenged by anybody in a court of law, an *ex parte* appraisal of the complaints received was done in a hurry by the Managing Director of the Corporation and the learned Commissioner, and was liable to be set aside on several grounds, the single most important one – insofar as Respondent No.1 is concerned – being the breach of natural justice. The High Court, therefore, held:

> "If the officials had cancelled the earlier tender notice in their wisdom and the cancellation of those tender notice was never questioned, merely because those earlier tender notices were cancelled/ withdrawn, a necessary presumption cannot be raised that the third notice inviting tender was for some extraneous considerations. It is true that the prices this time were taken to be very

high as against the earlier ones in the process of tender in which the prices were quoted very low but that does not itself become the ground to cancel the entire tender process which had not only been finalized but even the agreement had been entered into and the party under the contract was carrying out the work making huge investment of money. Had it been a case also of the kind where the party to the contract had violated the terms and conditions of the contract, it could have been said that the tender was liable to be cancelled for violation of terms and conditions of the tender agreement. But in the instant case no such finding has come to be returned. The reasons for which the tender proceedings that had already been concluded with the execution of the agreement, has been cancelled without assigning any reason of wrong practice adopted by the petitioner in obtaining the agreement. Thus the petitioner cannot be said to be at fault in the matter and, therefore, in our considered opinion if the petitioner was already working under the agreement and no charge was there that he violated the terms and conditions of the agreement, the respondents were not justified in cancelling the agreement ex parte.

xxx xxx xxx

There is no finding returned that at the stage of submission of the application against the notice inviting tender, the petitioner was not eligible or that at the time of the opening of the technical bid and financial bid the petitioner got wrongfully qualified and that the financial bid of the petitioner was wrongly approved and that the agreement entered between the petitioner and the Corporation was void being against the law. If in all the above three stages the petitioner cannot be held to be guilty in any manner for manipulating the things and obtaining the tender by hatching any conspiracy in connivance with the officials of the Corporation, cancellation of the agreement suddenly by the Managing Director holding that the entire Notice Inviting Tender was bad, certainly required a notice and opportunity of hearing to be afforded to the petitioner prior to passing of such an order. It is a settled principle of law that in administrative exercise of power, the authority exercising

power has to not only render due application of mind but also to follow the procedure which would not render the entire action arbitrary. It is settled legal principle that whatever is arbitrary, is hit by Article 14 of the Constitution of India and in the present case we find that only the procedure that was followed by the respondents in taking impugned action was not only quite ex parte but also under the executive fiats of the Special Secretary of the Government which was quite uncalled for."

14. Having so held, the High Court then concluded:

> "Order impugned is basically based on the enquiry report prepared by the Managing Director himself and that the enquiry was conducted in the ex parte manner and the Managing Director failed to offer any opportunity of hearing to the petitioner before passing the order impugned which has the effect of terminating the agreement for no justifiable reason to hold that the petitioner was at fault at any point of time. Element of bias therefore, under the circumstances at the end of Managing Director, cannot be ruled out. The order impugned, therefore, terminating the agreement dated 26.7.2019 cannot be sustained in law.
>
> Thus, for the forgoing discussions writ petition succeeds and is allowed. The order dated 26.7.2019 (Annexure-13) to the writ petition and the enquiry report dated 14.6.2019 submitted by the Managing Director as well as the order passed by the Special Secretary dated 16.7.2019 are also hereby quashed.
>
> The consequential action if taken pursuant to the impugned order is also quashed. The consequences to follow, however, there will be no order as to costs."

15. Dr. Abhishek Manu Singhvi, learned Senior Advocate appearing on behalf of the Corporation, first adverted to the prayer in the Writ Petition filed by Respondent No.1, and argued that the High Court had gone way

beyond what was asked for. According to him, the Writ Petition only prayed for a quashing of the cancellation order dated 26.07.2019 of the second tender. The High Court went way beyond, and not only quashed the aforesaid cancellation, but also quashed the enquiry report of the Managing Director dated 14.06.2019, as well as the order passed by the Special Secretary dated 16.07.2019, and the consequential action taken, namely, the departmental proceedings against the delinquent officers, which was never the subject matter of challenge in the Writ Petition. He went on to argue, based upon the comparison between the rates that were received in the earlier tender dated 01.04.2018 that was cancelled, and the rates in the 01.06.2018 tender, that the disparity was so great as to make it clear that the contracts for these four centres ought not to have been entered into at these rates at all. He argued that the High Court ought to have appreciated the huge financial loss that was caused as a result of awarding the contract at these rates, and ought not to have interfered with the cancellation of the tender, as it could not be characterised as arbitrary, given the huge increase in rates in such a short period for the same works. Further, he argued that the case law on natural justice showed that it was not an inflexible straitjacket, but had to be used wisely and well, and cited a number of judgments of this Court for the proposition that even though natural justice may be breached in the facts of a given case, if otherwise such breach does not result in

prejudice, it would be a mere exercise in futility to set aside the order and remand it to the authorities to pass an order after hearing the affected party. He also argued that as of today, the two year term of the contract is over, and this very contractor, i.e. Respondent No.1, is doing the same work awarded at Mirzapur on 21.03.2020 at rates (139% ASOR) which are much lower than the rates tendered for previously, as is the successful tenderer Tilotama Devi on and from 31.09.2019 so far as Bhawanipur-II is concerned, which was awarded at 221% ASOR. Dr. Singhvi also argued that the writ court ought not to have interfered in contractual matters, and ought to have left Respondent No.1 to approach a civil court to file a suit for appropriate reliefs.

16. Shri Tushar Mehta, learned Solicitor General appearing on behalf of the State of U.P., argued that he had a limited role, and confined his arguments to the setting aside of the letter dated 16.07.2019 of the Special Secretary to take departmental action. He argued that this letter could not have been set aside by the High Court, as no such prayer or argument was made before it by the writ petitioner.

17. Shri Rakesh Dwivedi, learned Senior Advocate appearing on behalf of Respondent No.1, argued that the High Court judgment ought not to be interfered with, inasmuch as his client had pumped in a lot of money, and had worked the contract for a period of over one year successfully and without any complaint whatsoever from the Corporation. He reiterated

the fact that nobody had challenged the award of the tender to his client, and that the cancellation of the tender was done behind his client's back. Had the authorities bothered to give his client a hearing, his client could have pointed out that in other nearby divisions, tenders were awarded at roughly the same rates, all of which contracts had been worked out, and none of which have been cancelled. Thus, he argued that his client suffered serious prejudice, in that he was able to work his contract for only one out of the two years that was awarded to him. He further argued that had a hearing been given, his client would also have demonstrated that the rates that were awarded could not be characterised as unreasonable, given the magnitude of the contract in his favour. He also argued that the award of tender at a lower rate at Mirzapur, which is currently being processed through his client, is not comparable with the tender that was awarded to his client for Bhawanipur I, because, *inter alia,* there was a huge difference between the volume of work awarded in the two contracts. He argued that it is idle to say that no prejudice has been caused, inasmuch as he has not been able to work the contract for one year, the contract period now being over, and that if the contract with his client is set aside, his client is debarred from bidding for a period of three years for any other contract with the Corporation. He further argued, in support of the impugned High Court judgment, that the action of termination by the Corporation was

without an independent application of mind, and was purely at the instruction of the Special Secretary of the Government of U.P. dated 16.07.2019. He also fairly argued that his statement may be recorded that his client is not going to claim damages for the period of the agreement post cancellation, and that in fairness, the earnest money deposit and security deposit made by his client ought to be returned by the Corporation.

18. Having heard learned counsel for all the parties, one thing becomes clear. Despite the fact that the prayer in the Writ Petition filed by Respondent No.1 was set out in the very beginning of the impugned judgment, confining itself to the cancellation of the second tender, the impugned judgment went ahead and not only set aside such cancellation *vide* the letter dated 26.07.2019, but also went ahead and set aside the Managing Director's report dated 14.06.2019, and the Special Secretary's order of 16.07.2019, which required the taking of disciplinary action and recovery of financial loss from those who are responsible. Shri Rakesh Dwivedi also fairly conceded that his client had not asked for any relief *qua* the delinquent officers. This being the case, we set aside the impugned judgment insofar as it has quashed the Managing Director's report dated 14.06.2019, and the order of the Special Secretary dated 16.07.2019. Any consequential action that is to be taken pursuant to these orders must follow in accordance with law.

19. Dr. Singhvi's preliminary objection as to Respondent No.1 having to approach a civil court, and not a writ court, for actions that pertain to breach of contract, need not detain us. In **ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Ltd. and Ors.** (2004) 3 SCC 553, this Court held that it was no longer *res integra* that a writ petition under Article 226 of the Constitution is maintainable at the instance of an aggrieved party to enforce a contractual obligation of the State or its instrumentality when the State acts in an arbitrary manner, as follows:

> "**8.** As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below, one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.
>
> **9.** In our opinion this question is no more *res integra* and is settled by a large number of judicial pronouncements of this Court. In *K.N. Guruswamy* v. *State of Mysore* [(1955) 1 SCR 305] this Court held:
>
> *"20. The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else. …*
>
> *We would therefore in the ordinary course have given the appellant the writ he seeks. But, owing to the time which this matter has taken to reach us (a consequence for which the appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fortnight of the contract left to go…A writ would therefore be ineffective and as it is not our practice to*

issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law."

10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in *K.N. Guruswamy* v. *State of Mysore* was followed subsequently by this Court in the case of *D.F.O.* v. *Ram Sanehi Singh* [(1971) 3 SCC 864] wherein this Court held:

"By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy case there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

11. In the case of *Gujarat State Financial Corpn.* v. *Lotus Hotels (P) Ltd.* [(1983) 3 SCC 379] this Court following an earlier judgment in *Ramana Dayaram Shetty* v. *International Airport Authority of India* [(1979) 3 SCC 489] held:

The instrumentality of the State which would be 'other authority' under Article 12 cannot commit breach of a solemn undertaking to the prejudice of the other party which acted on that undertaking or promise and put itself in a disadvantageous position. The appellant Corporation, created under the State Financial Corporations Act, falls within the expression of 'other authority' in Article 12 and if it backs out from such a promise, it cannot be said that the only remedy for the

aggrieved party would be suing for damages for breach and that it could not compel the Corporation for specific performance of the contract under Article 226.

12. The learned counsel appearing for the first respondent, however, submitted that this Court has taken a different view in the case of *LIC of India* v. *Escorts Ltd.* [(1986) 1 SCC 264] wherein this Court held: (SCC p. 344, para 102)

"If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder."

13. We do not think this Court in the above case has, in any manner, departed from the view expressed in the earlier judgments in the case cited hereinabove. This Court in the case of *LIC of India* proceeded on the facts of that case and held that a relief by way of a writ petition may not ordinarily be an appropriate remedy. This judgment does not lay down that as a rule in matters of contract the court's jurisdiction under Article 226 of the Constitution is ousted. On the contrary, the

use of the words “court may not ordinarily examine it unless the action has some public law character attached to it” itself indicates that in a given case, on the existence of the required factual matrix a remedy under Article 226 of the Constitution will be available. The learned counsel then relied on another judgment of this Court in the case of *State of U.P.* v. *Bridge & Roof Co. (India) Ltd.* [(1996) 6 SCC 22] wherein this Court held:

Further, the contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration. The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226.

14. This judgment again, in our opinion, does not help the first respondent in the argument advanced on its behalf that in contractual matters remedy under Article 226 of the Constitution does not lie. It is seen from the above extract that in that case because of an arbitration clause in the contract, the Court refused to invoke the remedy under Article 226 of the Constitution. We have specifically inquired from the parties to the present appeal before us and we have been told that there is no such arbitration clause in the contract in question. It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration, unless of course both the parties to the dispute agree on another mode of dispute resolution. Since that is not the case in the instant appeal, the observations of this Court in the said case of *Bridge & Roof Co.* [(1996) 6 SCC 22] are of no assistance to the first respondent in its contention that in contractual matters, writ petition is not maintainable.”

20. This principle has been consistently upheld by this Court in **Noble Resources v. State of Orissa and Anr.** (2006) 10 SCC 236 (at paragraph 15); **Food Corp. of India and Anr. v. SEIL Ltd. and Ors.** (2008) 3 SCC 440 (at paragraph 16); **Central Bank of India v. Devi Ispat Ltd. and Ors.** (2010) 11 SCC 186 (at paragraph 28); and **Surya Constructions v. State of U.P. and Ors.** (2019) 16 SCC 794 (at paragraph 3).

21. The judgments cited by Dr. Singhvi do not in any manner detract from the aforesaid principle. **Radhakrishna Agarwal and Ors. v. State of Bihar and Ors.** (1977) 3 SCC 457 was a judgment in which a writ petition against the State Government's revision of the rates of royalty payable to it under a lease, and the cancellation of the said lease, was held to be governed by contract between the parties, no unreasonableness being made out by way of State action so as to attract the provisions of Article 14 of the Constitution of India. The broad proposition that all such questions are to be settled by civil courts, and not by writ petitions, has been expressly dissented from, as "much water has flown" since this judgment, which was delivered during the emergency when the fundamental rights of persons were suspended. Thus, in **Verigamto Naveen v. Govt. of A.P. and Ors.** (2001) 8 SCC 344, this Court stated:

"**21.** On the question that the relief as sought for and granted by the High Court arises purely in the contractual field and, therefore, the High Court ought not to have exercised its power under Article 226 of the Constitution placed very heavy reliance on the decision of the Andhra Pradesh High Court in *Y.S. Raja Reddy* v. *A.P. Mining Corpn. Ltd.* [(1988) 2 An LT 722] and the decisions of this Court in *Har Shankar* v. *Dy. Excise & Taxation Commr.* [(1975) 1 SCC 737], *Radhakrishna Agarwal* v. *State of Bihar* [(1977) 3 SCC 457], *Ramlal & Sons* v. *State of Rajasthan* [(1976) 1 SCC 112], *Shiv Shankar Dal Mills* v. *State of Haryana* [(1980) 2 SCC 437], *Ramana Dayaram Shetty* v. *International Airport Authority of India* [(1979) 3 SCC 489] and *Basheshar Nath* v. *CIT* [AIR 1959 SC 149]. Though there is one set of cases rendered by this Court of the type arising in *Radhakrishna Agarwal case* [(1977) 3 SCC 457] much water has flown in the stream of judicial review in contractual field. In cases where the decision-making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such power or its decision is perverse or passed an irrational order, this Court has interceded even after the contract was entered into between the parties and the Government and its agencies. We may advert to three decisions of this Court in *Dwarkadas Marfatia & Sons* v. *Board of Trustees of the Port of Bombay* [(1989) 3 SCC 293], *Mahabir Auto Stores* v. *Indian Oil Corpn.* [(1990) 3 SCC 752] and *Shrilekha Vidyarthi (Kumari)* v. *State of U.P.* [(1991) 1 SCC 212]. Where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings it within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into a contract, in cancelling the contract which is subject to terms of the statutory provisions, as in the present case, it cannot be said that the matter falls purely in a contractual field. Therefore,

> we do not think it would be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under Article 226 of the Constitution is not called for. This contention also stands rejected."
>
> (emphasis supplied)

22. In **Rishi Kiran Logistics v. Board of Trustees of Kandla Port and Ors.** (2015) 13 SCC 233, this Court held that a writ petition under Article 226, being a public law remedy, a "public law element" should be present on facts before Article 226 can be invoked – see paragraphs 37 and 38. The law on this subject has been laid down exhaustively in **Joshi Technologies International Inc. v. Union of India and Ors.** (2015) 7 SCC 728, this Court stating:

> "**69.** The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:
>
> **69.1.** The Court may not examine the issue unless the action has some public law character attached to it.
>
> **69.2.** Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he

finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the

Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

23. It may be added that every case in which a citizen/person knocks at the doors of the writ court for breach of his or its fundamental rights is a matter which contains a "public law element", as opposed to a case which is concerned only with breach of contract and damages flowing therefrom. Whenever a plea of breach of natural justice is made against the State, the said plea, if found sustainable, sounds in constitutional law as arbitrary State action, which attracts the provisions of Article 14 of the Constitution of India – see **Nawabkhan Abbaskhan v. State of Gujarat** (1974) 2 SCC 121 at paragraph 7. The present case is, therefore, a case which involves a "public law element" in that the petitioner (Respondent No.1 before us) who knocked at the doors of the writ court alleged breach of the *audi alteram partem* rule, as the entire proceedings leading

to cancellation of the tender, together with the cancellation itself, were done on an *ex parte* appraisal of the facts behind his back.

24. The other judgments cited by Dr. Singhvi in his Written Submissions are distinguishable on facts, as all of them deal with either Public-Interest Litigations or tender applicants who have been turned down, who approach the writ court under Article 226 and ask for stay orders against a proposed project, which may then be considerably delayed and escalate cost, this being contrary to public interest. It is in these situations that observations have been made that before entertaining such writ petitions and passing interim orders, the writ court must be very careful to weigh conflicting public interests, and should intervene only when there is an overwhelming public interest in entertaining the writ petition. This is what was held in **Raunaq International Ltd. v. I.V.R. Construction Ltd. and Ors.** (1999) 1 SCC 492 at paragraphs 11 to 13, 24 and 25. To similar effect is the judgment in **Jagdish Mandal v. State of Orissa and Ors.** (2007) 14 SCC 517 at paragraph 22.

25. Likewise, this Court's judgment in **Michigan Rubber (India) Ltd. v. State of Karnataka and Ors.** (2012) 8 SCC 216 again deals with a writ court not interfering in the award of a tender, having regard to the public interest, which is paramount – see paragraphs 23 and 24. To the same effect are the judgments of this Court in **Tata Cellular v. Union of India** (1994) 6 SCC 651 (at paragraphs 70 and 71), and **Rajasthan State**

Housing Board and Anr. v. G.S. Investments and Anr. (2007) 1 SCC 477 (at paragraph 10).

26. Both the learned Senior Advocates locked horns on the *audi alteram partem* part of natural justice. Dr. Singhvi argued that it is not an inflexible tool in the hands of the Court, but must yield when no prejudice is caused, and where it would be an idle formality to set aside an order, as all the facts on record are admitted facts, to which nothing can be added or subtracted by Respondent No.1. Shri Dwivedi, on the other hand, argued that this is a case of a complete lack of natural justice, all orders having been passed behind the back of his client, as a result of which his client has been severely prejudiced.

27. Natural justice is at least as old as the first man created on earth – the biblical 'Adam'. J.R. Lucas in his book 'On Justice' states (at page 86):

> "Hence, when we are judging deeds, and may find that a man did wrong, there is a requirement of logic that we should allow the putative agent to correct misinterpretations or disavow the intention imputed to him or otherwise disown the action. God needed to ask Adam 'Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat?' Because it was essential that Adam should not be blamed or punished unless he had done exactly that deed. If the serpent had planted the evidence, or if he had beguiled Adam into eating it under the misapprehension that it came from another, non-forbidden tree, then Adam had not sinned and should not have been expelled from Eden. Only if the accused admits the charge, or, faced with the accusation, cannot explain his behaviour convincingly in any other way, are we logically entitled to conclude that he did indeed do it."

28. In some of the early judgments of this Court, the non-observance of natural justice was said to be prejudice in itself to the person affected, and proof of prejudice, independent of proof of denial of natural justice, was held to be unnecessary. The only exception to this rule is where, on "admitted or indisputable" facts only one conclusion is possible, and under the law only one penalty is permissible. In such cases, a Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue writs which are "futile" – see **S.L. Kapoor v. Jagmohan and Ors.** (1980) 4 SCC 379 at paragraph 24. In **P.D. Agrawal v. State Bank of India and Ors.** (2006) 8 SCC 776, however, the Court observed that this statement of the law has undergone a "sea change", as follows:

> **"39.** Decision of this Court in *S.L. Kapoor v. Jagmohan* [(1980) 4 SCC 379] whereupon Mr Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364] and *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460] the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of *audi alteram partem*, a clear distinction has been laid down between the cases where there was no hearing at

all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."

(emphasis supplied)

29. Equally, the prejudice that is caused, apart from natural justice itself being denied, cannot be said to be present in a case in which there are admitted facts. Thus, in **K.L. Tripathi v. State Bank of India and Ors.** (1984) 1 SCC 43, the Court held:

> "**29.** We are of the opinion that Mr Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural

justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in *On Justice* by J.R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase "*audi alteram partem*" which was first formulated by St. Augustine (*De Duabus Animabus*, XIV, 22 J.P. Migne, PL. 42, 110).

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32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or

the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases."

(emphasis supplied)

30. Likewise, in **State of U.P. v. Neeraj Awasthi and Ors.** (2006) 1 SCC 667, this Court held that where, on undisputed facts, a retrenchment would be valid in law, the principles of natural justice would not be attracted, unless there is some stigma or punitive measure which would be attached, which would then cause prejudice, as follows:

"**47.** If the employees are workmen within the purview of the U.P. Industrial Disputes Act, they are protected thereunder. Rules 42 and 43 of the U.P. Industrial Disputes Rules provide that before effecting any retrenchment in terms of the provisions of Section 6-N of the U.P. Industrial Disputes Act, the employees concerned would be entitled to a notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If such a retrenchment is effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principle of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached.

48. In *Viveka Nand Sethi* v. *Chairman, J&K Bank Ltd.* [(2005) 5 SCC 337] it was held: (SCC p. 345, para 22)

"22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash [(2004) 5 SCC 263].] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a

straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."

49. The High Court, therefore, must be held to have erred in law in holding that the principles of natural justice were required to be complied with."

31. In the five-Judge Bench decision in **Managing Director, ECIL and Ors. v. B. Karnakumar and Ors.** (1993) 4 SCC 727, this Court, after discussing the constitutional requirement of a report being furnished under Article 311(2), held thus:

"**30.** Hence the incidental questions raised above may be answered as follows:

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[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore,

even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

(emphasis supplied)

32. **B. Karunakar** (supra) was followed by this Court in **Haryana Financial Corporation and Anr. v. Kailash Chandra Ahuja** (2008) 9 SCC 31, as follows:

> "**21.** From the ratio laid down in *B. Karunakar* [(1993) 4 SCC 727] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment *non est* and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot *automatically* be set aside."
>
> (emphasis in original)

33. What is important to note is that it is the Court or Tribunal which must determine whether or not prejudice has been caused, and not the authority on an *ex parte* appraisal of the facts. This has been well-explained in a later judgment, namely **Dharampal Satyapal Ltd. v. Dy. Comm. Of Central Excise, Gauhati and Ors.** (2015) 8 SCC 519, in which, after setting out a number of judgments, this Court concluded:

> "**38.** But that is not the end of the matter. While the law on the principle of *audi alteram partem* has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-

fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of *procedural fairness*, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing "*would make no difference*"—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch* v. *Aberdeen Corpn.* [(1971) 1 WLR 1578], who said that: (WLR p. 1595)

"… A breach of procedure … cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

Relying on these comments, Brandon L.J. opined in *Cinnamond* v. *British Airports Authority* [(1980) 1 WLR 582] that: (WLR p. 593)

"… no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."

In such situations, fair procedures appear to serve no purpose since the "*right*" result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "*prejudice*". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

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42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. <u>It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority.</u>

This was so held by the English Court way back in the year 1943 in *General Medical Council* v. *Spackman* [1943 AC 627]. This Court also spoke in the same language in *Board of High School and Intermediate Education* v. *Chitra Srivastava* [(1970) 1 SCC 121], as is apparent from the following words: (SCC p. 123, para 7)

"7. The learned counsel for the appellant, Mr C.B. Agarwala, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show-cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show-cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed."

43. In view of the aforesaid enunciation of law, Mr Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since the judgment in *R.C. Tobacco* [(2005) 7 SCC 725] had closed all the windows for the appellant.

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in *ECIL* itself in the following words: (SCC p. 758, para 31)

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the

aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in *R.C. Tobacco* [(2005) 7 SCC 725] ."

(emphasis supplied)

34. In **State Bank of Patiala and Ors. v. S.K. Sharma** (1996) 3 SCC 364, a Division Bench of this Court distinguished between "adequate opportunity" and "no opportunity at all", and held that the "prejudice" exception operates more especially in the latter case. This judgment also

speaks of procedural and substantive provisions of law which embody the principles of natural justice which, when infracted, must lead to prejudice being caused to the litigant in order to afford him relief, as follows:

> "**32.** Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (*iii*) be in the interests of justice *or* would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.
>
> **33.** We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
>
> (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (*a*) the provision violated is of a substantive nature or (*b*) whether it is procedural in character.
>
> (2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(*a*) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial

compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(*b*) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar* [(1993) 4 SCC 727]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no *adequate* opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (*a*) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (*b*) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be

examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

35. In **M.C. Mehta v. Union of India and Ors.** (1999) 6 SCC 237, the expression "admitted and indisputable facts" laid down in **Jagmohan** (supra), as also the interesting divergence of legal opinion on whether it is necessary to show "slight proof" or "real likelihood" of prejudice, or the fact that it is an "open and shut case", were all discussed in great detail as follows:

> "**16.** Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the Court's discretion to refuse relief even though the rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party.

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22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See *Malloch* v. *Aberdeen Corpn*. [(1971) 1 WLR 1578] (per Lord Reid and Lord Wilberforce), *Glynn* v. *Keele University* [(1971) 1 WLR 487], *Cinnamond* v. *British Airports Authority* [(1980) 1 WLR 582] and other cases where such a view has been held. The latest addition to this view is *R.* v. *Ealing Magistrates' court, ex p Fannaran* [(1996) 8 Admn LR 351, 358] (Admn LR at p. 358) (see de Smith, Suppl. p. 89) (1998) where Straughton, L.J. held that there must be "*demonstrable beyond doubt*" that the result would have been different. Lord Woolf in *Lloyd* v. *McMahon* [(1987) 2 WLR 821, 862] (WLR at p. 862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy* v. *Grant* [1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is "real likelihood — not certainty — of prejudice". On the other hand, *Garner Administrative Law* (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge* v. *Baldwin* [1964 AC 40], Megarry, J. in *John* v. *Rees* [(1969) 2 WLR 1294] stating that there are always "open and shut cases" and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the "useless formality theory" is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that "convenience and justice are often not on speaking terms". More recently Lord Bingham has deprecated the "useless formality" theory

in *R.* v. *Chief Constable of the Thames Valley Police Forces, ex p Cotton* [1990 IRLR 344] by giving six reasons. (See also his article "Should Public Law Remedies be Discretionary?" 1991 PL, p. 64.) A detailed and emphatic criticism of the "useless formality theory" has been made much earlier in "Natural Justice, Substance or Shadow" by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* [(1971) 1 WLR 1578] and *Glynn* [(1971) 1 WLR 487] were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323), Craig (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are *not* all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "*discretion*", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364], *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

> **23.** We do not propose to express any opinion on the correctness or otherwise of the "useless formality" theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, "*admitted and indisputable*" facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J."

36. In **Aligarh Muslim University and Ors. v. Mansoor Ali Khan** (2000) 7 SCC 529, the aforesaid authorities were relied upon, and the answer given was that there is no absolute rule, and prejudice must be shown depending on the facts of each case, as follows:

> "**24.** The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi* v. *State Bank of India* [(1984) 1 SCC 43] Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting *Wade's Administrative Law* (5th Edn., pp. 472-75), as follows: (SCC p. 58, para 31)
>
> *"[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. … There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."*
>
> Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364]. In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460]

> **25.** The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta* referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

37. In **Union of India and Ors. v. Alok Kumar** (2010) 5 SCC 349, this Court, after eschewing a hyper-technical approach, held that prejudice must not merely be the apprehension of a litigant, but should be a definite inference of the likelihood of prejudice flowing from the refusal to follow natural justice, as follows:

> "**83.** Earlier, in some of the cases, this Court had taken the view that breach of principles of natural justice was in itself a prejudice and no other "de facto" prejudice needs to be proved. In regard to statutory rules, the prominent view was that the violation of mandatory statutory rules would tantamount to prejudice but where the rule is merely directory the element of de facto prejudice needs to be pleaded and shown. With the development of law, rigidity in these rules is somewhat relaxed. The instance of de facto prejudice has been

accepted as an essential feature where there is violation of the non-mandatory rules or violation of natural justice as it is understood in its common parlance. Taking an instance, in a departmental enquiry where the department relies upon a large number of documents majority of which are furnished and an opportunity is granted to the delinquent officer to defend himself except that some copies of formal documents had not been furnished to the delinquent. In that event the onus is upon the employee to show that non-furnishing of these formal documents have resulted in de facto prejudice and he has been put to a disadvantage as a result thereof.

xxx xxx xxx

87. In *ECIL* v. *B. Karunakar* [(1993) 4 SCC 727] this Court noticed the existing law and said that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are neither incantations to be invoked nor rites to be performed on all and sundry occasions. Whether, in fact, prejudice has been caused to the employee or not on account of denial of report to him, has to be considered on the facts and circumstances of each case. The Court has clarified even the stage to which the departmental proceedings ought to be reverted in the event the order of punishment is set aside for these reasons.

88. It will be useful to refer to the judgment of this Court in *Haryana Financial Corpn.* v. *Kailash Chandra Ahuja* [(2008) 9 SCC 31] at pp. 38-39 where the Court held as under: (SCC para 21)

"21. From the ratio laid down in B. Karunakar it is explicitly clear that the doctrine of natural justice requires supply of a copy of the enquiry officer's report to the delinquent if such enquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the enquiry officer is in breach of natural justice. But it is equally clear that failure to supply a report of the enquiry officer to the delinquent employee

would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside."

89. The well-established canons controlling the field of bias in service jurisprudence can reasonably be extended to the element of prejudice as well in such matters. Prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion. It is important that the element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default which relates to statutory violations. It will not be permissible to set aside the departmental enquiries in any of these classes merely on the basis of apprehended prejudice."

38. Under the broad rubric of the Court not passing futile orders as the case is based on "admitted" facts, being admitted by reason of estoppel, acquiescence, non-challenge or non-denial, the following judgments of this Court are all illustrations of a breach of the *audi alteram partem* rule being established on the facts of the case, but with no prejudice caused to the person alleging breach of natural justice, as the case was one on admitted facts:

(i) **Punjab and Sind Bank and Ors. v. Sakattar Singh** (2001) 1 SCC 214 (see paragraphs 1, 4 and 5);

(ii) **Karnataka SRTC and Anr. v. S.G. Kotturappa and Anr.** (2005) 3 SCC 409 (see paragraph 24);

(iii) **Viveka Nand Sethi v. Chairman, J&K Bank Ltd. and Ors.** (2005) 5 SCC 337 (see paragraphs 21, 22 and 26);

(iv) **Mohd. Sartaj and Anr. v. State of U.P. and Ors.** (2006) 2 SCC 315 (see paragraph 18);

(v) **Punjab National Bank and Ors. v. Manjeet Singh and Anr.** (2006) 8 SCC 647 (see paragraphs 17 and 19);

(vi) **Ashok Kumar Sonkar v. Union of India and Ors.** (2007) 4 SCC 54 (see paragraphs 26 to 32);

(vii) **State of Manipur and Ors. v. Y. Token Singh and Ors.** (2007) 5 SCC 65 (see paragraphs 21 and 22);

(viii) **Secretary, A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar and Ors.** (2007) 13 SCC 352 (see paragraph 7)

(ix) **Peethani Suryanarayana and Anr. v. Repaka Venkata Ramana Kishore and Ors.** (2009) 11 SCC 308 (see paragraph 18);

(x) **Municipal Committee, Hoshiapur v. Punjab State Electricity Board and Ors.** (2010) 13 SCC 216 (see paragraphs 31 to 36, and paragraphs 44 and 45);

(xi) **Union of India and Anr. v. Raghuwar Pal Singh** (2018) 15 SCC 463 (see paragraph 20).

39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of

fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

40. Judged by the touchstone of these tests, it is clear that Respondent No.1 has been completely in the dark so far as the cancellation of the award of tender in his favour is concerned, the *audi alteram partem* rule having been breached in its entirety. As has been correctly argued by Shri Rakesh Dwivedi, prejudice has indeed been caused to his client, not only from the fact that one year of the contract period has been taken away, but also that, if the impugned High Court judgment is to be set aside today, his client will be debarred from bidding for any of the Corporation's tenders for a period of three years. Undoubtedly, *prima facie*, the rates at which contracts have been awarded pursuant to the tender dated 01.06.2018 are way above the rates that were awarded of the same division, and for exactly the same amount of work awarded *vide* the earlier tender advertisement dated 01.04.2018. Shri Dwivedi's argument that in the neighbouring regions the rates tendered were also high, and nothing has yet been done to nullify these tenders and the financial loss caused, does carry some weight. That a huge financial loss to the Corporation has also taken place is something for the Corporation to probe, and take remedial action against the persons responsible.

41. We, therefore, uphold the impugned judgment of the High Court on the ground that natural justice has indeed been breached in the facts of the

present case, not being a case of admitted facts leading to the grant of a futile writ, and that prejudice has indeed been caused to Respondent No.1. In view of this finding, there is no need to examine the other contentions raised by the parties before us.

42. We reiterate the submission of Shri Dwivedi that as his client is working for the Corporation in another subsequent tender, he is not going to claim damages for the lost period post cancellation of the tender. This being the case, and other things being equal, the earnest money deposit and security deposit made by his client is ordered to be returned by the Corporation within a period of eight weeks from today. Shri Dwivedi's client may also request the Corporation to pay any amount that remained unpaid for work actually done, which the Corporation will, after a hearing, either allow or reject for reasons to be stated.

43. The appeals arising out of SLP (C) 5136 of 2020 and SLP (C) 7351 of 2020 are thus partially allowed, and the impugned judgment of the High Court of Judicature at Allahabad dated 11.12.2019 is set aside only to the extent indicated by us above.

44. Insofar as the appeal arising out of SLP (C) No. 7364 of 2020 is concerned, the facts therein are distinct from the other two connected appeals before us only to the extent that Respondent No.1 therein, M/s Dharam Raj Singh, was the successful bidder for the Tendu (Sonbhadra) region, which award of tender was also cancelled by the Corporation's

order dated 26.07.2019. The judgment impugned in this appeal, dated 07.01.2020 of the High Court of Judicature of Allahabad (Lucknow Bench), allowed M/s Dharam Raj Singh's writ petition challenging the cancellation order, stating that it was to be governed by the judgment of the High Court of Judicature at Allahabad dated 11.12.2019. As a result, our judgment in the two connected appeals, and all consequential reliefs granted, will apply on all fours to this appeal also.

45. With these observations, these appeals are disposed of.

……J.
(R.F. Nariman)

……J.
(Navin Sinha)

……J.
(K.M. Joseph)

New Delhi;
16th October 2020.

CASE 14 OF 35

M/s Universal Dyechem Private Limited v. Union of India & Ors.

Court	High Court of Gujarat
Bench	J.B. Pardiwala and Ilesh J. Vora, JJ.
Date	01.02.2021
Case no. / citation	2021:GUJHC:4095-DB; Special Civil Application No. 1654 of 2021

Holding in brief

Once a show cause notice is issued, documents not relied upon in it should be returned under proper receipt (as the master circular of 19.01.2017 also provides). The authority was to decide the representation within a week and, if documents cannot be returned, to give reasons in writing.

Paragraphs highlighted

Paras 6 and 9. Highlighted passages are on compendium pages 193-194.

Status

Final order; writ application disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 191.

NEUTRAL CITATION
2021:GUJHC:4095-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1654 of 2021

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M/S UNIVERSAL DYECHEM PRIVATE LIMITED

Versus

UNION OF INDIA

==========

Appearance:
PARTH S SHAH(8375) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,2,3,4

==========

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 01/02/2021

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs;

> *"(A) To issue writ of mandamus and/or any other appropriate writ(s) to direct the Respondent No.3 to release the documents as mentioned in Form GST INS-02 dated 06.02.2020 (Annexure-C), after retaining photocopies of the same within a time frame to be fixed by the Hon'ble Court;*
>
> *(B) To issue writ of mandamus and/or any other appropriate writ(s) to direct the Respondent No.3, alternatively to provide photocopies of all the documents as mentioned in Form GST INS-02 dated 05.02.2020 (Annexure-C) within a time frame to be fixed by this Hon'ble Court;*
> *(C) To grant ad-interim relief with respect to prayer under Para-(a) & Para (b) above;*
>
> *(D) To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;*

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NEUTRAL CITATION
2021:GUJHC:4095-DB

(E) To issue Rule Nisi in terms of Prayers (a) to (d) above;

(F) To award Costs of and incidental to this application be paid by the Respondents."

2. The writ applicant No.1 is a Company and the writ applicant No.2 is one of the Directors of the Company. The firm is engaged in the business of manufacturing and trading of dyes and chemicals. The principal place of business of the firm is at Jodhpur (Rajasthan). It appears that the firm also has a branch at Surat. The respondent No.3 and other officers of the DGGST conducted search and seizure at the principal place of business at Jodhpur on 14th February, 2020. An order of seizure of certain documents dated 14th February, 2020 came to be passed in Form GST INS-02. It appears that the search proceedings were also initiated at Surat Branch of the firm on 6th February, 2020. The Directors of the firm were also issued summons under Section 70 of the Act for the purpose of their interrogation.

3. It is the case of the writ applicants that in the course of the seizure proceedings, various documents like stock register, sale and purchase invoices, bills, books of accounts, ledger accounts etc. were seized. Its been more than ten months that such documents are not being returned. Neither photocopies of the same are being provided to the writ applicants. It appears that a show-cause notice has also been issued pursuant to the search proceedings under Section 67.

4. Mr. Gatani, the learned counsel appearing with Mr. P.S. Shah, the learned counsel appearing for the writ applicants

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would submit that despite making numerous requests in writing for the return of such documents, the respondent No.3 has not responded till this date. It is submitted that all those documents are required by the writ applicants for their day to day business, more particularly, for the purpose of audit and filing of the returns. One of the submissions of the learned counsel is that the documents which are demanded by the writ applicants do not form part of the show-cause notice and in such circumstances, the writ applicants have reasons to believe that all such documents have not been taken into consideration for the purpose of issue of the show-cause notice and further proceedings. Mr. Gatani invited the attention of this Court to the last representation dated 21.12.2020 addressed and forwarded to the respondent No.3 herein making a request for providing the copies of the documents which came to be seized under Section 67. The representation is at Page-114 of the paper-book, Annexure-P.

5. We find reference of many orders passed by various High Courts in this regard and we also find reference of many CBIC circulars in this regard. In such circumstances, we expect the respondent No.3 to look into the representation dated 21.12.2020, Annexure-P to this writ application, Page-114 and take an appropriate decision in accordance with law in that regard.

6. We are of the view that once the show-cause notice is issued to the party concerned, the documents/records, which have not been relied upon, should be returned to the party. This is what even is suggested in the master circular dated 19.01.2017 which has been referred to in the representation.

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In the master circular, in clear terns, it has been stated that a show-cause notice and the documents relied upon in the show-cause notice, should be served on the assessee for initiation of the adjudication proceedings. However, the documents/records which are not relied upon in the show-cause notice, are required to be returned under proper receipt to the person from whom those are seized.

7. In view of the aforesaid, we dispose of this writ application with a direction to the respondent No.2 to immediately look into the representation at Page-114, Annexure-P to this writ application and take an appropriate decision in accordance with law within a period of one week from the date of the communication of this order. We hope that an appropriate decision in accordance with law is taken and the writ applicants are not dragged to a second round of litigation.

8. With the above, this writ application stands disposed of.

9. In the event if the Respondent No.3 is of the view that such documents, as demanded by the writ applicants, cannot be returned, then he shall assign cogent reasons for such decision and communicate the same in writing to the writ applicants so that they can take necessary recourse available to them in law.

Direct service of the order is permitted.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

Vahid

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CASE 15 OF 35

M/s Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority & Ors.

Court	Supreme Court of India
Bench	Dipankar Datta and S. Ravindra Bhat, JJ.
Date	01.02.2023
Case no. / citation	Civil Appeal No. 5393 of 2010

Holding in brief

Alternative remedy is not an absolute bar to a writ. Where a jurisdictional question is raised (here the competence of the revisional authority to act suo motu), the High Court ought not to throw the petition out at the threshold. The revisional orders were invalidated. A VAT case, cited on maintainability of writs.

Paragraphs highlighted

Paras on the writ petition not to be thrown out at the threshold, and the conclusion. Highlighted passages are on compendium pages 204, 207, 223-224.

Status

Final judgment; appeal allowed.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 196.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5393 OF 2010

M/S GODREJ SARA LEE LTD. ……APPELLANT(S)

VS.

THE EXCISE AND TAXATION OFFICER-CUM-ASSESSING AUTHORITY & ORS. …..RESPONDENT(S)

J U D G M E N T

DIPANKAR DATTA, J.

This appeal, by special leave, registers a challenge to an order dated 12th October, 2009 passed by the High Court of Punjab and Haryana at Chandigarh (hereafter 'the High Court', for short) dismissing Civil Writ Petition No.9191 of 2009 presented by the appellant and relegating it to the remedy of an appeal under section 33 of the Haryana Value Added Tax Act, 2003 (hereafter 'the VAT Act', for short).

2. Two questions emerge for decision on this appeal. First, whether the High Court was justified in declining interference on the ground of availability of an alternative remedy of appeal to the appellant under section 33 of the VAT Act, which

it had not pursued. Should the answer to the first question be in the negative, we would next be required to decide whether to remit the writ petition to the High Court for hearing it on merits or to examine the correctness or otherwise of the orders impugned before the High Court.

3. It appears on a perusal of the order under challenge in this appeal that the appellant had questioned the jurisdiction of the Deputy Excise and Taxation Commissioner (ST)-cum-Revisional Authority, Kurukshetra (hereafter 'the Revisional Authority', for short) to reopen proceedings, in exercise of *suo motu* revisional power conferred by section 34 of the VAT Act, and to pass final orders holding that the two assessment orders, both dated 28th February, 2007 passed by the ETO-cum-Assessing Authority, Kurukshetra (hereafter 'the Assessing Authority', for short) for the assessment years 2003-04 and 2004-05 suffered from illegality and impropriety as delineated therein, viz. that the Assessing Authority erred in levying tax on mosquito repellant (a product manufactured by the appellant) @ 4% instead of 10%. Keeping in view the objection raised by counsel for

the respondents that without exhausting the remedy of appeal provided by section 33 of the VAT Act "*it would not be permissible to entertain this petition*" and upon consideration of the decision of this Court reported in (1975) 2 SCC 436 *(Titagarh Paper Mills vs. Orissa State Electricity Board & Anr.)* based on which it was contended on their behalf that where any right or liberty arises under a particular Act then the remedy available under that Act has to be availed, the High Court was of the opinion that there can be no presumption that the appellate authority would not be able to grant relief sought in the writ petition; hence, the writ petition was dismissed and the appellants were relegated to the appellate remedy.

4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The

power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy

is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts,

writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 *(State of Uttar Pradesh vs. Mohd. Nooh)* had the occasion to observe as follows:

> "10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (*Halsbury's Laws of England*, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies

> **before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***"**

6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 *(Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others)* carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

- **(i) where the writ petition seeks enforcement of any of the fundamental rights;**
- **(ii) where there is violation of principles of natural justice;**
- **(iii) where the order or the proceedings are wholly without jurisdiction; or**
- **(iv) where the vires of an Act is challenged.**

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 *(Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited)* has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 *(State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.)* and (2000) 10 SCC 482 *(Union of India vs. State of Haryana)*. What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.

9. Now, reverting to the facts of this appeal, we find that the appellant had claimed before the High Court that the *suo motu* revisional power could not have been exercised by the Revisional Authority in view of the existing facts and circumstances leading to the only conclusion that the assessment orders were legally correct and that the final orders impugned in the writ petition were passed upon assuming a jurisdiction which the Revisional Authority did not possess. In fine, the orders impugned were passed wholly without jurisdiction. Since a jurisdictional issue was raised by the appellant in the writ petition questioning the very competence of the Revisional Authority to exercise *suo motu* power, being a pure question of law, we are of the considered view that the plea raised in the writ petition did deserve a consideration on merits and the appellant's writ petition ought not to have been thrown out at the threshold.

10. Reliance placed by the High Court on the decision in *Titagarh Paper Mills* (supra), in our view, was completely misplaced. The respondent Electricity Board had levied coal surcharge on the

appellant company in terms of an agreement. Such agreement contained an arbitration agreement in clause 23. Instead of pursuing its remedy in arbitration, the appellant company unsuccessfully invoked the writ jurisdiction. This Court was approached whereupon it was held that in view of the issues raised, there was no reason why the appellant company should not pursue its remedy in arbitration, having solemnly accepted clause 23 of the agreement, and instead invoke the extraordinary jurisdiction of the high court under Article 226 of the Constitution to determine questions which really form the subject matter of the arbitration agreement. This decision could not have been of any relevance having regard to the issue presented for resolution before the High Court by the appellant, particularly when the disputes *inter se* were not referable to arbitration.

11. We have reasons to believe, considering the nature of objection raised by the respondents as recorded by the High Court in the impugned order, that the High Court had mistakenly referred to *Titagarh Paper Mills* (supra) while intending to rely on a different decision of this Court on an appeal

preferred by the same party, reported in (1983) 2 SCC 433 *(Titaghur Paper Mills Co. Ltd. vs. State of Orissa)*. While upholding the impugned order of dismissal of the writ petition, where an order passed by the Sales Tax Officer was under challenge, this Court in *Titaghur Paper Mills Co. Ltd.* (supra) held that the challenge being confined to the regularity of proceedings before the Sales Tax Officer and there being no suggestion that the concerned officer had no jurisdiction to make an assessment, the decision in *Mohd. Nooh* (supra) was clearly distinguishable since in that case there was total lack of jurisdiction. This Court also held that under the scheme of the relevant Act, there was a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of and that since the authority of the concerned officer to make an assessment was not in question, recourse ought to be taken by initiating proceedings thereunder. As noted above, the very jurisdiction of the Revisional Authority having been questioned in the writ petition, the impugned order of the High Court dismissing the writ petition without examining the merits of the challenge cannot be sustained even if

the High Court were to rely on *Titaghur Paper Mills Co. Ltd.* (supra) to support such order.

12. The High Court by dismissing the writ petition committed a manifest error of law for which the order under challenge is unsustainable. The same is, accordingly, set aside.

13. Moving on to decide the second question, ordering a remand is an available option for us. However, having regard to the lapse of time (almost a life term of fourteen years) since the orders impugned in the writ petition were made, we feel that it would not be in the best interests of justice to remit the matter to the High Court. Since prior to reserving judgment on this appeal we had heard the parties on the merits of the jurisdictional issue that the appellant had raised before the High Court, it is time to rule on the jurisdiction of the Revisional Authority.

14. The appellant is engaged in the business of manufacturing, marketing and sales of household insecticide products in various forms, viz. mosquito coils, mats, refills, aerosols, baits and chalks under the popular brand name "Good Knight" and

"Hit" from, *inter alia*, its sales office at Kurukshetra, and is an 'assessee' under the VAT Act.

15. In terms of section 7 of the VAT Act, the taxable goods have been classified under Schedules A, B and C. It is found from Schedule C (as originally enacted) that pesticides, weedicides and insecticides were included in Entry 1 and taxable @ 4%.

16. Returns were filed by the appellant for the Assessment Years 2003-04 and 2004-05 declaring its gross turnover from manufacturing and sales of insecticides and pesticides, besides other consumer goods. Such returns were duly accepted. However, in view of an amendment in Entry 67 of Schedule C introduced by a notification dated 30th June, 2005, notices were issued by the Assessing Authority as to why tax liability @ 10% instead of 4% should not be imposed. Upon hearing the representative of the appellant, orders dated 28th February, 2007 and 28th March, 2008 were passed by the Assessing Authority for the Assessment Years 2003-04 and 2004-05, respectively, accepting the classification of goods and the rate of tax as stated by the appellant in its returns, i.e. 4%.

17. Subsequently, the Revisional Authority called for the assessment records of the appellant for the Assessment Years 2003-04 and 2004-05 for revision of the assessment on classifying the household insecticide products of the appellant as mosquito repellants and taxable at the higher rate of tax, i.e. 10%, instead of 4%. Initially, show-cause notices seeking to revise the assessments made for the Assessment Years 2003-04 and 2004-05 were issued, and such exercise was followed up by identically worded final orders, both dated 2nd March, 2009.

18. Several legal questions including validity of certain notifications were raised by the appellant before the High Court in its writ petition. Apart from the question as to whether mosquito repellants are goods classifiable as insecticides, pesticides, weedicides, etc., one other question which the appellant sought to raise was whether an amendment in the schedule of classification/rates of tax could be applied to completed assessments for the assessment years prior to the amendment coming into effect. However, before us, the only limited question which the appellant raised was, whether the orders of the

Revisional Authority, both dated 2nd March, 2009, seeking to revise the orders of the Assessing Authority dated 28th February, 2007 and 28th March, 2008 pertaining to the Assessment Years 2003-04 and 2004-05, have been issued in exercise of jurisdiction conferred by law.

19. For facility of understanding, it would be convenient at this stage to reproduce the material part from the revisional order passed in respect of the Assessment Year 2004-05, below:

> **"I, xxxxxxx, Dy. Excise & Taxation Commissioner-cum-Revisional Authority, Kurukshetra called for the assessment record of M/s Godrej Sara Lee Ltd., Pipli holding TIN xxxxxxx for the assessment year 2004-05. Shri xxxxxxx, ETO-cum-Assessing Authority Kurukshetra passed this assessment order on 28.3.2008. On examination of the assessment record, I was prima facie of the view that the said assessment order suffered from the following illegalities and impropriates (sic, improprieties):**
>
> **The assessing authority erred in levying tax on Mosquito Repellant @ 4% Instead of 10%**
>
> **Accordingly, a show cause notice was issued for 2.3.2009. On 2.3.2009 Shri Ajay Goel, Advocate of the firm appeared along with application for adjournment on the plea that due to closing month of March, 2009 the dealer is unable to get the case decided. The application for adjournment is rejected as the dealer has not to produce any account books or is not to prepare any documents only law point is involved in the case. The dealer has sold mosquito repellant and deposited tax @ 4%. The Hon'ble Supreme Court of India in the case of M/s Sonic Electrochem and another vs. STO and other (1998) 12-PHT-215 (SC) held that Jet Mat Mosquito Repellant is not pesticides/insecticides. Therefore, these goods are general goods and liable to tax at general rate**

of tax. Hence, a notice was issued to the dealer to explain as to why tax should not be levied at general rate of tax on the sale of mosquito repellants. The counsel of the firm has not offered any arguments on the issue. In view of the decision of the Hon'ble Apex Court in the case of M/s Sonic Electrochem and another vs. STO and other (1998) 12-PHT-215 (SC), it is unarguable clear that mosquito repellant mats being unscheduled goods are taxable at general rate of tax. Confusion was also cleared with the amendment to entry 67 vide notification dated 1.7.2005.

In view of the above facts, it is clear that assessing authority while framing assessment has erred in levying tax @ 4% on mosquito repellants. Hence the assessment order dated 28.3.2008 is revised u/s 34 of the Act ibid as under:

TTO @ 10%	Rs.5,28,89,282	Rs.52,88,928
(Mosquito Repellants)	Tax already assessed By the AA in original	
	Order	Rs.21,15,571
	Due	Rs.31,73,357

Issue Tax Demand Notice Challan for Rs.31,73,357 along with a copy of the order to the dealer."

20. The assessment order dated 28th March, 2008 of the Assessing Authority under section 15 of the VAT Act pertaining to Assessment Year 2004-05, which was sought to be revised by the Revisional Authority, had taken into consideration the decision of this Court reported in (1998) 6 SCC 397 *(Sonic Electrochem vs. S.T.O.)*. The appellant therein having sold 'Jet Mat', a mosquito repellent, it was ruled by this Court that the same was liable to tax @ 10%. Considering such decision, a notice was issued to the appellant to

explain as to why tax should not be levied @ 10% on the sale of 'Godrej Mat'. Put to notice, it was *inter alia* argued on behalf of the appellant before the Assessing Authority that the Haryana Tax Tribunal (hereafter 'the Tribunal', for short), constituted under section 57 of the VAT Act, by its order dated 21st November, 2001 had the occasion to dismiss a petition filed by the department seeking review of an earlier order dated 22nd March, 2000. The Assessing Authority extracted the relevant part of the order 21st November, 2001 of the Tribunal passed on the review petition in its order dated 28th March, 2008, reading as follows:

> **"The only limited question to be addressed is whether the ratio of the judgment of the Hon'ble Apex Court delivered in the above mentioned case of M/s Sonic Electrochem and others is applicable in the present case? This judgment of the Hon'ble Supreme Court is clearly distinguishable from the facts of the present case as the said judgment was delivered in special circumstances were there was specific an entry 129 dealing with mosquito repellants and hence the Court held that judgment would be covered under entry 129. However, there is no such corresponding entry in the Haryana General Sales Tax Act and therefore the issue would be whether mosquito repellant would fall within the entry dealing with insecticide etc. or not? The Hon'ble Madras High Court, the Tribunal in the case of Transelektra Domestic Products Pvt. Ltd., and others vs. Commercial Tax Officer, Porur Assessment Circle Madras and others has clearly held that mosquito repellants containing 4% Alethrin' was an insecticide and relying on the judgment of the Hon'ble Madras High Court, the Tribunal in the case of M/s Balsara Hygiene Products Ltd. Kundli (Sonepat) vs State of Haryana has also held that**

> Mosquito Repellants is an insecticide and hence liable to concessional rate of tax. The same view has been taken by the Hon'ble Tribunal in the impugned order and I do not find any infirmity in this order. It has not been contested that Jet Mats does contain 'Allethrin' which is an insecticide. Hence, in these circumstances, the present review petition is dismissed."

Being bound by the decision of the Tribunal, the Assessing Authority formed an opinion and returned a finding that he had no other alternative but to vacate the notice issued by him proposing to levy tax @ 10% instead of 4% and proceeded to do so.

21. Appearing in support of the appeal, Mr. V. Lakshmikumaran, learned counsel, contended that the Assessing Authority having passed the order dated 28th March, 2008 taking into consideration the decision of the Tribunal, which in turn distinguished the decision in *Sonic Electrochem* (supra), and such decision having attained finality, the Revisional Authority could not have assumed a jurisdiction to *suo motu* issue the impugned show-cause notices as well as the final revisional orders under section 34 of the VAT Act holding that mosquito repellent mats being unscheduled goods, are taxable at the general rate of tax. According to him, the Revisional Authority was as much bound by the order of the

Tribunal as the Assessing Authority was having regard to the similarity of issues involved and it was not open to such authority to take a view different from the one expressed by the Tribunal.

22. Our attention was drawn by Mr. Lakshmikumaran to the decision of this Court reported in 1992 SUPP (1) SCC 443 *(Union of India and Ors. Vs. Kamlakshi Finance Corporation Ltd.)* in support of the proposition that in disposing of quasi-judicial issues before them, the Revenue Officers are bound by the decisions of the appellate authorities and that the principle of judicial discipline requires that the orders of the higher appellate authorities are followed unreservedly by the subordinate authorities.

23. Mr. Lakshmikumaran, accordingly, prayed that upon the revisional orders being set aside, the orders of the Assessing Authority be restored.

24. *Per contra*, Mr. Alok Sangwan, learned counsel appearing for the respondents, contended that the Revisional Authority did not exceed its jurisdiction in exercising *suo motu* powers under section 34 of the VAT Act. By referring to notifications issued at or about the relevant time amending Schedule C and the

decision in *Sonic Electrochem* (supra), he sought to argue on the merits of the determination made by the Revisional Authority and how she was right in her findings that the mosquito repellants manufactured by the appellant were liable to be taxed @ 10% in terms of the decision in *Sonic Electrochem* (supra), and not 4% as assessed by the Assessing Authority in the orders under revision. He also submitted that the orders of the Revisional Authority do not merit interference, and the appeal ought to be dismissed.

25. At the hearing, we made it clear that the issue as to whether the impugned orders of the Revisional Authority were sustainable on merits would not be examined unless the Court was persuaded by Mr. Sangwan to accept that the Revisional Authority did have the authority, competence and jurisdiction to issue the impugned show-cause notices and pass the consequential final revisional orders impugned in the writ petition enhancing the liability of the appellant to tax @ 10% instead of 4%.

26. Since section 34 of the VAT Act appears to have been the source of power exercised by the Revisional Authority, we shall first notice its contents as it

stood on the date of the impugned orders, i.e. 2nd March, 2009. Prior to its amendment with effect from 20th March, 2009, section 34 read as follows:

> **"Section 34. Revision. : - (1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto, as he may think fit:**
>
> **Provided that no order passed by a taxing authority shall be revised on an issue, which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:**
>
> ***Provided further* that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court."**
>
> **(2) The State Government may, by notification in the Official Gazette, confer on any officer not below the rank of Deputy Excise and Taxation Commissioner, the powers of the Commissioner under sub-section (1) to be exercised subject to such exceptions, conditions and restrictions as may be specified in the notification and where an officer on whom such power have been conferred passes an order under this section, such order shall be deemed to have been passed by the Commissioner under sub-section (1)."**

27. To the extent relevant for the present decision, *suo motu* power of revision could be exercised by the Revisional Authority for the purposes of satisfying

himself as to the legality or propriety of any order made in any proceeding which is prejudicial to the interests of the State. The first proviso, however, imposed a restriction on exercise of such *suo motu* power, if an issue had been settled, *inter alia*, by an appellate authority. Thus, the *sine qua non* for exercise of power under section 34 is the satisfaction of the Revisional Authority that an order has been made by a taxing authority in any proceeding prejudicial to the interests of the State, the legality or propriety of which appears to him to be *prima facie* vulnerable. Nevertheless, such power cannot be exercised if the issue involved is pending before or has been settled by an appellate authority. It cannot be disputed that the Tribunal is comprehended within the meaning of 'appellate authority' as defined in section 2(b) of the VAT Act.

28. These being the contours of section 34, as it then stood, it needs to be seen how far the Revisional Authority was justified in drawing power from such provision and exercising it.

29. A bare perusal of the impugned revisional orders reveals that the decision in *Sonic Electrochem*

(supra) formed the plinth for the satisfaction that the orders of assessment are liable to be revised. The decision in *Sonic Electrochem* (supra) was rendered upon consideration of the Gujarat Sales Tax Act, 1969 (hereafter 'the Sales Tax Act', for short). The short question that arose for a decision was, whether 'Jet Mat' produced by the appellant therein would come within Entry 129 of Schedule II Part A of the Sales Tax Act, issued under section 49 thereof. Entry 129, at the relevant point of time, read thus:

Sl. No.	Description of goods	Rate of sales tax	Rate of purchase tax
129	Mosquito repellents	Twelve paise in the rupee	Twelve Paise in the

30. Having regard to the specific entry, i.e. Entry 129, dealing with mosquito repellents, this Court overruled the contention of the appellant therein that 'Jet Mat' would not come within the ambit of Entry 129 since one of its constituents happens to be an insecticide. It was also held that the product manufactured by the appellant therein, viz. 'Jet Mat', which was commercially known as "Mosquito Repellent Mat" is a mosquito repellant notwithstanding the fact that it not only repels mosquitoes but is also capable of killing mosquitoes.

For the reasons assigned in the decision, it was held that 'Jet Mat' is not an insecticide which would be entitled for partial exemption under Entry 98 of the Sales Tax Act.

31. It is, therefore, clear that because of the specific entry dealing with mosquito repellents, this Court held 'Jet Mat' to be covered under Entry 129.

32. As the Tribunal in its order dated 21st November, 2001 found, there was no such corresponding entry in the VAT Act. Bearing in mind the same as well as on consideration of a decision of the Madras High Court and other decisions, the Tribunal had proceeded to hold that mosquito repellents containing 4% 'Alethrin' was an insecticide and hence, liable to concessional rate of tax.

33. While deciding the present appeal, we are primarily concerned with the issue of assumption of jurisdiction by the Revisional Authority on the face of the unchallenged order of the Tribunal dated 21st November, 2001, and not with the merits of the decision either given by the Tribunal or by the Revisional Authority. What stares at the face of the respondents is that the aforesaid decision of the

Tribunal, quoted in the order of the Assessing Authority, has attained finality. Once the issue stands finally concluded, the decision binds the State, a *fortiori,* the Revisional Authority. The decision of the Tribunal may not be acceptable to the Revisional Authority, but that cannot furnish any ground to such authority to perceive that it is either not bound by the same or that it need not be followed. The first proviso, in such a case, gets activated and would operate as a bar to the exercise of powers by the Revisional Authority.

34. In our view, the Revisional Authority might have been justified in exercising *suo motu* power to revise the order of the Assessing Authority had the decision of the Tribunal been set aside or its operation stayed by a competent Court. So long it is not disputed that the Tribunal's decision, having regard to the framework of classification of products/tax liability then existing, continues to remain operative and such framework too continues to remain operative when the impugned revisional orders were made, the Revisional Authority was left with no other choice but to follow the decision of the Tribunal

without any reservation. Unless the discipline of adhering to decisions made by the higher authorities is maintained, there would be utter chaos in administration of tax laws apart from undue harassment to assesses. We share the view expressed in *Kamlakshi Finance Corporation Ltd.* (supra).

35. In the midst of hearing, we had enquired from Mr. Sangwan whether there has been any decision of any other competent Tribunal or High Court taking a view different from the one taken by the Tribunal in its order dated 21st November, 2001, which was considered by the Assessing Authority. Fairly, he answered in the negative. If only Mr. Sangwan could have invited our attention to any such decision, which were acceptable to us, the issue decided by the Tribunal could have been reopened on the ground that it is a debatable issue and interference with the final orders passed by the Revisional Authority may not have been resorted to, leaving the appellant to pursue the appellate remedy under the VAT Act.

36. There is also substance in the contention of Mr. Lakshmikumaran that *suo motu* power of revision, on the terms of section 34, could have been exercised

only if the orders sought to be revised suffered from any illegality or impropriety.

37. A decision may be questioned as suffering from an illegality if its maker fails to understand the law that regulates his decision making power correctly or if he fails to give effect to any law that holds the field and binds the parties. On the other hand, having regard to the purpose section 34 seeks to serve, to take exception to a decision on the ground of lack of propriety of any proceedings or order passed in such proceedings, it essentially ought to relate to a procedural impropriety. It is incumbent for the accuser to show that the decision maker has failed to observe the standard procedures applicable in case of exercise of his power. Additionally, to impeach an order on the ground of moral impropriety, it has to be shown that the weight of facts together with the applicable law overwhelmingly points to one course of action but the decision has surprisingly gone the other way, giving reason to suspect misbehaviour or misconduct in the sphere of activity of the decision maker warranting a revision.

38. There is nothing on record to justify either illegality or (procedural/moral) impropriety in the proceedings before the Assessing Authority or the orders passed by him, as such. As noted above, the Assessing Authority was bound by the order of the Tribunal and elected to follow it having no other option. Such decision of the Tribunal was even binding on the Revisional Authority. In such circumstances, to brand the orders of the Assessing Authority as suffering from illegality and impropriety appears to us to be not only unjustified but also demonstrates thorough lack of understanding of the principle regulating exercise of *suo motu* revisional power by a quasi-judicial authority apart from being in breach of the principle of judicial discipline, while confronted with orders passed by a superior Tribunal/Court. We are inclined to the view that it is not the Assessing Authority's orders but those passed by the Revisional Authority, which suffer from a patent illegality.

39. For the foregoing reasons, we have no other option but to invalidate the impugned final revisional orders dated 2nd March, 2009 for the

Assessment Years 2003-04 and 2004-05. It is ordered accordingly.

40. The interim order dated 18th January, 2010 is made absolute.

41. The appeal stands allowed. However, the parties are left to bear their own costs.

.....J
(S. RAVINDRA BHAT)

NEW DELHI; **.....J**
1st FEBRUARY, 2023. **(DIPANKAR DATTA)**

CASE 16 OF 35

Sri Guberan Steels v. The Assistant Commissioner (ST), Thudiyalur Circle, Coimbatore

Court	High Court of Madras
Bench	Senthilkumar Ramamoorthy, J.
Date	22.01.2024
Case no. / citation	W.P. No. 1251 of 2024 (with 1255 and 1258 of 2024)

Holding in brief

The records on which the petitioner needed to answer the defects were in the custody of another authority, and this affected his ability to respond. The orders were quashed and remanded for fresh orders after the petitioner files his documents and is given a reasonable opportunity.

Paragraphs highlighted

Paras 4 (last part) and 5. Highlighted passages are on compendium pages 231-232.

Status

Final order; orders quashed and remanded.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 226.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.01.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.1251, 1255 and 1258 of 2024
and W.M.P.Nos.1310, 1300, 1301, 1302, 1303, 1307 of 2024

Sri Guberan Steels
41/NA, Sivalpuri Amman Nagar,
Coimbatore 641 027.
Rep. by its Proprietor ... Petitioner in all WP's

-vs-

The Assistant Commissioner (ST)
Thudiyalur Circle,
Coimbatore 641 018. ... Respondent in all WP's

PRAYER in W.P.No.1251 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent leading to passing of Impugned order dated 31.07.2023 vide GSTIN: 33AHTPR7225E2Z2 / 2019-20 and quash the same.

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PRAYER in W.P.No.1255 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent leading to passing of Impugned order dated 31.07.2023 vide GSTIN: 33AHTPR7225E2Z2 / 2020-21 and quash the same.

PRAYER in W.P.No.1258 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent leading to passing of Impugned order dated 31.07.2023 vide GSTIN: 33AHTPR7225E2Z2 / 2021-22 and quash the same.

For Petitioner in all WP's : Mr.S.Sathiyanarayanan

For Respondents in all WP's : Mr.C.Harsha Raj, AGP (T)

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COMMON ORDER

In these three writ petitions, the petitioner assails the assessment order in respect of financial years 2019-20, 2020-21 and 2021-22, respectively. The petitioner states that he is a registered person under applicable GST laws. Pursuant to a surprise inspection, it is stated that the petitioner received an intimation in Form DRC-01A and a show cause notice in Form DRC-01. The petitioner replied to the intimation by pointing out that the relevant books are not available with the petitioner as regards defect no.2, which pertains to the difference in outward taxable turnover between GSTR-3B, GSTR-1 and e-way bills. By a subsequent reply dated 03.07.2023 to the personal hearing notice, the petitioner reiterated that the books of accounts, e-way bills and invoices are with the Superintendent, Office of the Assistant Commissioner of GST and Central Excise, Coimbatore Division-II and, therefore, the petitioner is unable to

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produce documentary evidence in support of movement of goods and payment details. The impugned assessment orders were issued in the above facts and circumstances.

2. Learned counsel for the petitioner invited my attention to the orders impugned herein and pointed out that the claim relating to circular trading could not be dealt with by the petitioner on account of non availability of relevant documents to establish purchase, movement of goods and payments. He also pointed out that the petitioner informed the respondent about such non availability both in reply dated 07.01.2023 and the later reply dated 03.07.2023. By submitting that the petitioner has subsequently received the relevant documents, learned counsel submits that the petitioner should be provided an opportunity to establish that the purchases were genuine.

3. Mr.C.Harsha Raj, learned Additional Government Pleader,

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accepts notice for the respondent. He submits that the impugned order is a reasoned order issued after taking into consideration the petitioner's replies. For instance, he points out that the claim made in respect of defect no.3, which pertains to cancellation of e-way bills, was dropped upon consideration of the reply of the petitioner on 07.01.2023 and submissions made during the hearing. He also points out that the receipt of documents that were previously in the custody of the Central GST Authorities would have no bearing as regards defect no.1, which pertains to the difference between GSTR-3B and GSTR-2A. Although the order is a composite order, Mr.C.Harsha Raj, learned Additional Government Pleader, submits that any infirmity therein with regard to specific defects can be more appropriately addressed in a statutory appeal.

4. When reply dated 07.01.2023 and 03.07.2023 are considered cumulatively, it follows that the petitioner informed the respondent that he is unable to reply to defect no.2 and the circular trading defect

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on account of non availability of relevant documents. The impugned order also records that the petitioner could not respond to these defects as a result of non availability of documents. As correctly contended by Mr.C.Harsha Raj, learned Additional Government Pleader, it is likely that these documents may not have a bearing as regards defect no.1. Nonetheless, a composite order of assessment was issued with regard to four defects and the documents on record disclose that the non availability of records, on account of such documents being in the custody of the Central GST authority, undoubtedly impacted the petitioner's ability to respond to two defects. In exercise of discretionary jurisdiction, I am of the view that interference is warranted in this case because the non availability of documents, for reasons outlined above, impacted two out of the three defects in respect of which an order adverse to the petitioner was issued. Therefore, solely with a view to provide an opportunity to the petitioner to respond to these defects, the impugned order calls for interference.

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5. For reasons set out above, the impugned orders are quashed and the matter is remanded for re-consideration. The petitioner shall submit all relevant documents within a maximum period of ***three weeks*** from the date of receipt of a copy of this order. Upon providing a reasonable opportunity to the petitioner after receipt of such documents, the assessing officer shall issue fresh assessment orders within a maximum period of ***four months*** thereafter.

6. W.P.Nos.1251, 1255 and 1258 of 2024 are disposed of on the above terms. No costs. Consequently, W.M.P.Nos.1310, 1300, 1301, 1302, 1303, 1307 of 2024 are closed.

22.01.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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The Assistant Commissioner (ST)
Thudiyalur Circle, Coimbatore 641 018.

SENTHILKUMAR RAMAMOORTHY,J

rna

W.P.Nos.1251, 1255, 1258 of 2024
and W.M.P.Nos.1310, 1300, 1301, 1302, 1303, 1307 of 2024

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CASE 17 OF 35

M/s Madura Coats Pvt. Ltd. v. Commissioner of Central Excise & Anr.

Court	Supreme Court of India
Bench	P.S. Narasimha and Aravind Kumar, JJ.
Date	25.04.2024
Case no. / citation	2024 INSC 336; SLP (C) Nos. 371-372 of 2019

Holding in brief

A document merely referred to in a notice is not necessarily relied on. Non-furnishing of a document matters only if the assessee shows prejudice, for example a document not from the assessee, relied on to draw an adverse inference. The remand to the Tribunal was affirmed, with prejudice left open.

Paragraphs highlighted

Para 13 (High Court's findings as extracted) and para 15. Highlighted passages are on compendium pages 246-248.

Status

Final order; appeals disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 236.

2024 INSC 336

Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. of 2024
(@ SPECIAL LEAVE PETITION (CIVIL) NOs. 371-372 OF 2019)

M/S MADURA COATS
PRIVATE LIMITED …APPELLANT(S)

VERSUS

THE COMMISSIONER OF
CENTRAL EXCISE AND ANR. …RESPONDENT(S)

J U D G E M E N T

Aravind Kumar, J.

1. Leave granted.

2. Being aggrieved by the order dated 18.07.2018 passed by the High Court, Madras whereunder the order of the Customs, Excise and Service Tax Appellate Tribunal (hereafter referred to as 'CESTAT') dated 05.05.2009 came to be set aside and remanded the matter back to the tribunal for disposal of the appeals came to be passed by directing the appeals be heard on merits these appeals have been filed.

3. Short facts shorn of explicit details are as under:

4. The appellant is engaged in the manufacture of cotton yarn, polyester yarn etc. and based on an information received that it had indulged in clearance of certain goods manufactured by it without payment of duty resulted in the preventive unit of the respondent visiting the unit and conducting stock challenge of the finished fabrics stocked in the bonded warehouse. Based on a prima facie and reasonable belief that excess quantities of stock were stored for illicit removal, the department seized the excess stock under mahazar and it was provisionally released on execution of general bond; it also resulted in the issuance of two show cause notices (for short SCN's) dated 11.05.2001 and 02.11.2001 which resulted in two orders being passed on 28.02.2006 by the respondent herein. Being aggrieved by the same appeals came to be filed before CESTAT whereunder the tribunal vide order dated 06.09.2006 set aside the orders in original dated 28.02.2006, with a direction to the respondent to provide a copy of the letter dated 20.01.2001 referred to in the SCN's to the appellant and to decide the matter afresh.

5. In the teeth of direction issued by the tribunal, first respondent adjudicated the show cause notices afresh and by separate orders dated 21.11.2008 and 27.11.2008 raised the demand for payment of duty as indicated in the respective orders which resulted in both the orders being challenged by filing two appeals before CESTAT and vide order dated

05.05.2009 in order No. 550 and 551 of 2009 tribunal allowed the appeals and set aside the aforesaid orders of the respondent and yet again directed the respondent herein to pass fresh orders after providing the copy of the letter dated 20.01.2001.

6. Thereafter, the respondent herein filed an application under section 35C (2) of the Central Excise Act, 1944 (hereinafter referred to as 'CE Act' for short) for rectification of the order dated 05.05.2009 contending inter alia that letter dated 20.01.2001 which was ordered to be furnished by the department was not available and sought permission to adjudicate the SCN's afresh without supplying or taking into account the said communication dated 20.01.2001. The said application came to be dismissed as withdrawn with liberty to take appropriate steps vide order dated: 04.01.2010. In the light of the said liberty granted, the respondent herein filed two miscellaneous petitions before CESTAT for modification of the order No.550 and 551 of 2009 dated 05.05.2009 resulting in modification of the order dated 05.05.2009 whereby the respondent was directed to adjudicate the show cause notices without relying upon the letter dated 20.01.2001. Being aggrieved by the same, the appellant herein filed two appeals before the High Court in CMA No.469 and 470 of 2010 resulting in the order of the tribunal being set aside and remanding the matter back for hearing the appeal afresh. Hence, these appeals.

7. We have heard the arguments of Shri Shekhar Naphade, learned Senior Counsel appearing for the appellant and Shri V.C. Bharathi, learned Counsel appearing on behalf of Mr. N. Venkatraman, Additional Solicitor General, for respondent. It is the thrust of the arguments of Shri Shekhar Naphade, learned Senior Counsel that final order No.838 to 840 of 2006 dated 06.09.2006 passed by the tribunal having attained finality whereunder the respondent was directed to furnish the copy of the letter dated 20.01.2001 and the annexures appended thereto and due to non-compliance thereof the High Court ought to have allowed the appeal in its entirety and it could not have remanded the matter back to the tribunal for adjudication of SCN's afresh. He would elaborate his submissions by contending that order dated 06.09.2006 passed by the tribunal by remanding the matter to the adjudicating authority with specific direction being final and binding on the department, said order could not have been modified by the tribunal that too based on an application for modification vide order dated 08.03.2010. He would also contend that High Court erred in not appreciating the fact that in the absence of document containing detailed explanation the adjudicating authority cannot appreciate and adjudicate the SCN's and the order of remand to the tribunal is erroneous and High Court at the most could have remanded the matter to the adjudicating authority, if at all it was warranted

and not to the tribunal. Hence, on these grounds, he seeks for setting aside the order of the High Court and allowing the appeals.

8. Shri V.C. Bharathi, learned counsel appearing for the respondent would support the impugned order and by reiterating the contentions urged in the counter affidavit and prays for dismissal of the appeal. He would also contend that the appellant has been successfully dodging the adjudication process on one pretext or the other and the so-called letter dated 20.01.2001 which had been directed by the CESTAT by Order dated 06.09.2006 to be furnished to the appellant is the letter of the appellant itself, which undisputedly was an explanation offered by the appellant with reference to alleged shortfall and excess storage of fabrics. He would also contend that mere reference to a document in the show cause notice itself need not be construed as if reliance having been placed by the authority on the said document so as to draw inference against the appellant, unless the show cause notice says so. He would further contend that until and unless appellant is able to establish prejudice on account of non-furnishing of the document and it would not be in a position to reply to the show cause notice, such plea of non-furnishing of the document ought not to be entertained. Hence, he would support the impugned order and prays for dismissal of the appeals.

9. Having heard the learned counsel appearing for the parties and on perusal of the impugned order, it would emerge there from that undisputedly

at the first instance when the respondent adjudicated the show cause notices dated 11.05.2001 and 20.01.2001 it had resulted in an order dated 28.02.2006 being passed which landed by way of two appeals in final order No.838 to 840 of 2006 before CESTAT and tribunal by order dated 06.09.2006 had observed to the following effect:

> "**4.** It has been asserted by the company's representative that they want to rely upon all documents not relied upon in the SCNs, for the purpose of contesting the allegations contained in the notices. Admittedly, these documents were received by them by 30.12.2005. The cases were posted for personal hearing to 25th January, 2006. On that day, the company's representative appeared before the Commissioner and requested for some more time for perusal of the documents. A renewed request was made for a copy of the aforesaid letter dated 20.01.2001 also. However, it appears, no more opportunity was given to the party and learned Commissioner chose to pass the impugned orders on 28.02.2006. We have found an element of denial of natural justice in these proceedings of the Commissioner. Learned Commissioner ought to have given a reasonable time to the party to peruse the voluminous records for the purpose of preparing replies to the SCNs. He appears to have passed the impugned orders in haste.
>
> **5.** In the result, we set aside the impugned orders and allow these appeals by way of remand, directing learned Commissioner to (a) supply a copy of the aforesaid letter dated 20.01.2001 (and enclosures thereof) to the appellants (b) allow them a period of four weeks thereafter for perusal of all records (c) allow them a reasonable opportunity of being personally heard (which shall not be less than 7 days from the date of filing of replies to the SCNs and (d) pass speaking orders in accordance with law within 8 weeks from the date of personal hearing. As the party has undertaken to co-operate with the proceedings of the Commissioner, they are mandated to appear before the Commission for being heard on the date appointed by him."

10. A perusal of the above direction issued by the tribunal would indicate that respondent was directed to supply the copy of the letter dated 20.01.2001 (and enclosures thereof) to the appellant and pass orders after affording reasonable opportunity of the personal hearing.

11. In the teeth of the above direction the respondent herein has passed an order afresh on 21.11.2008 and 27.11.2008 adjudicating the two show cause notices issued earlier. The fact remains that copy of the letter dated 20.01.2001 along with enclosures were not furnished pursuant to the aforesaid directions issued by the tribunal by the adjudicating authority. In fact, request for furnishing the same came to be reiterated by the appellant in the de novo proceedings adjudications of 2 SCN's and it has been observed by the adjudicating authority itself vide paragraph 19 of the order dated 21.11.2008 and paragraph 9 of the order dated 27.11.2008 respectively to the following effect:

> "**19.** At the time of personal hearing held on 21.04.2008 before the undersigned, Shri M. Ramasubramanian, Manager (Excise) appeared. He requested that MCL either be supplied with a copy of the document (letter dated 20.01.2001 with enclosures) as directed by CESTAT or be informed of the non-availability of the same so as to file rely. In this connection, he also gave a written representation. A communication was sent to them on 14.07.2008 informing that, MCL projected before the CESTAT as if a copy of the said letter dated 20.01.2001 was not made available to them; whereas, vide their letter dated 22.06.2002, MCL fairly admitted receipt of copies of all documents relied on in the notice; even if they had misplaced their copy as stated before CESTAT copies of the said letter with enclosures should have been available with MCL; and therefore they may file reply to the notice. The communication also mentioned the dates on which MCL was free to appear for hearing. At the time of hearing held on 16.09.2008, Shri S.S. Thakkur, Vice President (Excise & Legal) appeared along with Shri M. Ramasubramanian, Manager (Excise). They filed reply with reconciliation statements. It was argued that there was no evidence to prove clandestine removal and hence demand made in the notice would not survive. They accordingly, requested for dropping the proceedings."

> "**9.** At the time of personal hearing held on 21.04.2008 before the undersigned, Shri. M. Ramasubramanian, Manager (Excise) appeared. He requested that MCL either be supplied with a copy of the document (letter dated 20.01.2001 with enclosures) as directed

> by CESTAT or be informed of the non-availability of the same so as to file reply. In this connection, he also gave a written representation. A communication was sent to them on 14.07.2008 informing that, MCL projected before the CESTAT as if a copy of the said letter was not made available to them; whereas, vide their letter dated 22.06.2002, MCL fairly admitted receipt of copies of all the documents relied on in the notice; even if they misplaced their copy as stated before CESTAT, copies of the said letter with enclosures should have been available with MCL; and therefore they may file reply to the notice. The communication also mentioned the dates on which MCL was free to appear for hearing. At the time of hearing held on 16.09.2008, Shri. S.S. Thakur, Vice-President (Excise & Legal) appeared along with Shri. M Ramasubramanian, Manager (Excise). They filed reply with reconciliation statements. It was orally argued that since there was no evidence for clandestine removal, the proceedings should be dropped."

12. The direction issued by the tribunal undisputedly has got merged with order dated 27.11.2008 it would be apt and appropriate to note at this juncture itself the contention raised by Shri Shekhar Naphade, learned Senior Counsel which is to the effect that by virtue of the direction issued by the tribunal under its order dated 06.09.2006 having attained finality, the authorities subordinate to the CESTAT having failed to comply with the directions so issued should have resulted in automatic allowing of the appeals by the High Court, though at first blush looks attractive, same cannot be accepted for reasons more than one. ***Firstly***, the direction so issued by the tribunal on 06.09.2006 included a direction to the respondent to pass orders afresh which had resulted in respondent passing the orders on 21.11.2008 and 27.11.2008 respectively. ***Secondly***, the High Court under the impugned order has itself observed that letter dated 20.01.2001 has not been relied upon by the revenue as an adverse document against the assessee while

adjudicating the SCN's. The observation made by the High Court is to the following effect:

> "14. At this juncture, we would like to point out that the said letter, dated 20.01.2001 is not relied on by the Revenue as an adverse document against the assessee. On the other hand, it is the document of the assessee themselves, that too, an explanation given by them to the short fall and excess of the fabrics. Only when a document relied on adversely against the assessee, if not supplied to the assessee before passing the order of adjudication, such non furnishing may be construed as an act in violation of principles of natural justice. In this case it is not so."

Thirdly, it has been the consistent stand of the respondent-department that the said letter was in fact supplied to the assessee's representative and the same has been discussed in threadbare by the High Court under the impugned order which is to the following effect:

> "15. Even otherwise, as pointed by the learned senior panel counsel for the second respondent, it is evident that the said letter was in fact supplied to the assessee's representative on 26.02.2002, in view of the acknowledgment made by one R. Manoharan stating that he received Xerox copies of all relied upon documents (except S.No. 15), mentioned in the show cause notice no. 20 of 2001 and 30 of 2001 from the superintending of Central Excise, HBQ, Madurai. Thus it is contended by the Revenue that the copy of the letter dated 20.01.2001 was already furnished to the assessee and therefore principles of natural justice was not violated. We find force in the said submission not only based on such acknowledgement on 26.02.2002 and also in view of the assessee's own communication, dated 19.08.2004 addressed to the Commissioner of Central Excise, Tirunelveli, requesting him to once again provide copies of four documents, out of which, one is the said letter, dated 20.01.2001. The said letter reads as follows:-

The Commissioner of Central Excise,
Central Excise Revenue Building
NGO "A" Colony,
Tirunelveli-627 007
Sir,

Sub: Show Cause Notice No.20 of 2001, dated 2.11.2001 and No.30 of 2001, dated 11.5.2001.

This refers to our letter dated 5th July 2004 and your office response letter dated 8th July 2004 on the above subject.

We humbly submit that we are in the process of preparing reply to the above show cause notices. We once again bring to your kind notice that in view of closure of our unit Madura Fabrics Division in early 2002 to which the above show cause notices were issued and due to non-availability of Personnel who handled excise records during the relevant period, we are even unable to trace out certain documents/statements which were relied upon in the show cause notices and said to have been received by us. We therefore, request you to place once again provide us copies of the following documents and statements given by out personnel for our perusal and then prepare proper reply to the above show cause notice.

Documents and Statements.

1. Chemical Examiner letters issued from File No.LCx.52/S/636/200-01, dated 7.3.2001 and 10.4.2001.
2. Statement dated 30.4.2001 given by Sri R. Murali Narayanan, Information Technology Manager.
3. A file containing letter dated 20.1.2001 along with the enclosures-64 sheets.
4. Statement dated 20.4.2001 given by Mr. R. Nallasivan, Sales Executive-5 sheets.

We submit that it is not out intention to unnecessarily defer submission of reply to the show cause notice but we are handicapped in tracing out the relevant records, invoices, stock registers etc., including documents which were relied upon in the show cause notice, due to non-availability of concerned personnel.

We therefore humbly request you to please provide us time upto October 2004 to trace out all the relevant documents, study and prepare proper reply to the show-cause notice.

We extremely sorry for the inconvenience caused.

Thanking you,

Yours faithfully,
For MADURAI COATS PRIVATE LIMITED.

(emphasis supplied)"

13. In fact, the High Court has opined and rightly so that the said letter dated 20.01.2001 (with enclosures) which is claimed by the appellant has not having been furnished is only a ruse for not replying to the show cause notices and it would in no way prejudice the appellant's claim, particularly in the background of reliance not having been placed by the respondent-authority for adjudicating the SCN's and in the absence of prejudice having been caused to the appellant no fault can be laid at the doors of the respondent. It would be of benefit to note that observations made by the High Court in this regard and same is to the following effect:

> "19. Admittedly, the said letter, dated 20.01.2001 is not available with the Revenue. It is claimed by the assessee that copy of the said letter is also not available with the assessee. We have already pointed out that the said letter with enclosures had emanated only from the assessee and therefore, it is their own document. We have also pointed out that the said letter is nothing but an explanation regarding the alleged short fall and excess of the fabrics. Therefore, it was for the assessee to give a suitable reply to the show cause notices, as the contents of the said letter was already discussed by the Commissioner in the show cause notices itself. Therefore, the assessee is not entitled to contend as if they were not in a position to furnish reply to the show cause notice without furnishing a copy of the said letter, dated 20.01.2001. Referring a document in the show cause notice itself need not be construed as though a reliance is also placed by such authority on such document to take an adverse inference against the assessee, unless the show cause notice itself explicitly expresses so. Referring a document in a show cause notice does not mean relying upon the same as well, unless such reliance against the assessee is apparently evident on the face of such notice.
>
> 20. Even otherwise, the assessee must show and establish that such non-furnishing of a particular document caused them prejudice and that they are prevented from giving an effective reply to the show cause notice. Certainly, a document which was either not within the knowledge of the assessee or not emanated from them, if relied on in the show cause notice, that too, by taking adverse inference against the assessee based on such document, then non-furnishing of

such document would certainly result in causing prejudice to the assessee. On the other hand, if such document itself has emanated from the assessee and not from any third party or the Revenue and if the same was also not considered to draw any adverse inference against the assessee to form a prima facie opinion in the show cause notice, non-furnishing of such document to the assessee itself would not be construed as causing prejudice to the assessee. It is not beyond one's reasonable expectation that an assessee who sent a communication to the Revenue, would certainly retain a copy of the same in their file, especially when the proceedings are going on and not get terminated. If they did not retain a copy of such document or if it is lost from their hand, the assessee has to blame themselves. In this Scenario, the question of prejudice does not arise. At the best, it could be treated as prejudice caused by self-default or predetermination and not a prejudice caused at the instance of the Revenue."

14. Though, we are in complete agreement with the contention raised by Shri Shekhar Naphade that order of review or modification which came to be passed on 08.03.2010 is without sanctity of law deserves to be accepted in the light of the findings recorded at paragraph 25 to 29 of the impugned order and we affirm the same, yet for the reason that matter has now been remanded back to the tribunal for adjudicating the SCN's afresh dissuade us from setting aside the impugned order.

15. The High Court has also rightly not remitted the matter to the adjudicating authority for considering the matter afresh and the findings of the High Court recorded under the impugned order in paragraph 19 and 20 referred to supra having been affirmed by us herein above, yet we deem it appropriate to reserve the liberty to the appellant to urge all contentions before the tribunal including the one urged before this Court namely to

demonstrate as to how prejudice has been caused to the appellant by non-furnishing of the said letter dated 20.01.2001 (with enclosures) and contentions of both parties are kept open and the order of remand made to the tribunal by the High Court under the impugned order would stand affirmed subject to the above observations. Accordingly, the appeals stand disposed of with no order as to costs.

…….....…….J.
(Pamidighantam Sri Narasimha)

…….....…….J.
(Aravind Kumar)

New Delhi,
April 25, 2024

CASE 18 OF 35

Aimlay Private Limited & Ors. v. Commissioner of Central Tax (Delhi West) & Ors.

Court	High Court of Delhi
Bench	Vibhu Bakhru and Sachin Datta, JJ.
Date	20.08.2024
Case no. / citation	W.P.(C) 4273/2024

Holding in brief

Deposit of Rs. 22 lakh claimed to have been made under compulsion: no direction for refund was given, but the petitioners may apply for refund in accordance with law without waiting for adjudication. Seized hard disks were returned except two laptops reported stolen, for which the right to compensation was reserved.

Paragraphs highlighted

Paras 9 to 11. Highlighted passages are on compendium pages 255.

Status

Final order; petition disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 250.

$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20.08.2024*

\+ **W.P.(C) 4273/2024 and CM No.17509/2024**

AIMLAY PRIVATE LIMITED (THROUGH THE DIRECTOR SH. RAKESH GUPTA) & ORS. .....Petitioners

Through: Ms Beenashaw Soni, Mr Jitin Singhal and Ms Mansi Jain, Advocates.

versus

COMMISSIONER OF CENTRAL TAX (DELHI WEST) & ORS. .....Respondents

Through: Mr Anurag Ojha, Senior Standing Counsel with Mr Subham Kumar and Mr Kumar Abhishek, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (*ORAL*)

1. The present petition was briefly heard on 25.07.2024 and the following order was passed.

> "**W.P.(C) 4273/2024**
>
> 4. The petitioners have filed the present petition, *inter alia*, praying as under:
>
> > "*(a) to issue a writ of certiorari or any other appropriate writ, order or directions, quashing the orders dated 20.11.2023 passed by the learned Commissioner, Central Tax, Delhi West [Respondent No.1] whereby he provisionally attached the current Bank Account No. 082805001395 of the petitioner no.1 and Bank Account No. 082805002086 of the petitioner no. 2 maintained at ICICI Bank Ltd, Rohini, Sector-24, New Delhi [IFSC Code ICIC0000828];*

(b) to issue a writ of certiorari or any other appropriate writ, order or directions, quashing the orders dated 20.11.2023 passed by the learned Commissioner, Central Tax, Delhi West [Respondent No.1] whereby he provisionally attached the Saving Bank Account No. 30929377425 and Fixed Deposits No.42333497965 & 42385934961 of the petitioner no. 3 maintained at State Bank of India, Rohini, Sector-24, New Delhi [IFSC Code SBINOO 11551];

(c) to issue a writ of mandamus or any other appropriate writ, order or directions to the respondents to return the assets including laptops, CPUs, Mobile Phones etc. which were seized as per seizure memos dated 16.11.2023 at the officer and residential premises of the petitioners;

(d) to issue a writ of mandamus or any other appropriate writ, order or directions to the respondents to refund an amount of Rs. 22,00,000/- along with interest to the petitioners;

(e) to issue a writ of mandamus or any other appropriate writ, order or directions, to the respondents directing them to carry out their investigations in accordance with law and more specifically to videograph the statement recording process of the petitioners and further not to harass the petitioners and not to insist upon the petitioners or their group company to deposit any amount during investigation without there being any final determination of any GST liability and thereby conduct a fair investigation."

5. It is apparent from the above that the reliefs claimed by the petitioners in the present petition are three-fold. First, the petitioners challenge the orders dated 20.11.2023 (hereafter *the impugned orders*), passed by the Commissioner, Central Tax, Delhi West [Respondent No.1 (hereafter *the Commissioner*)], provisionally attaching the bank accounts of petitioner no.1 and it's Directors'. Second, the petitioners prays that directions be issued to the Commissioner for returning the petitioners' assets, including laptops, CPUs, Mobile Phones etc., which were seized during the search and

seizure operations conducted on 16.11.2023. And third, the petitioners prays that directions be issued to the respondents to refund an amount of ₹22,00,000/-, which the petitioners claim that they were coerced to deposit during the course of search conducted by the respondents.

6. In so far as the petitioners' challenge to the impugned orders freezing the bank account is concerned, this Court had by an order dated 20.03.2024 permitted the petitioners to make an application to the Commissioner to permit limited operations of their bank accounts to enable petitioner no.1 company to continue as a going concern. The representative of the petitioners was directed to appear before the concerned officer on 02.04.2024 at 02:30 PM for the said purpose.

7. In compliance with the said directions, the petitioners had appeared before the Commissioner and advanced submissions. Thereafter, the Commissioner passed a speaking order dated 16.04.2024 setting out in detail, its reasons for not acceding to the petitioners' prayer and justifying the impugned orders for freezing the bank accounts in question.

8. In view of the above, learned senior counsel for the petitioners does not, at this stage, press any relief regarding the freezing of the bank accounts.

9. The second relief sought by the petitioners is regarding return of the laptops, CPUs, Mobile Phones and other documents, which were seized during the search and seizure operations.

10. Concededly, the petitioners are entitled to make copies of documents under Section 67(5) of the Central Goods and Services Tax Act, 2017 (hereafter the *CGST Act*) and extracts of any documents seized under Section 67(2) of CGST Act.

11. In terms of Section 67(3) of CGST Act, all documents, books, or things seized under Section 67(2) of CGST Act, are required to be returned to the person from whom the same are seized within the period not exceeding 30 days from the date of issuance of the notice.

12. The Commissioner had considered the said provisions

and permitted the petitioners to obtain copies of the documents and data on the seized assets/devices on a mutually convenient date.

13. In these circumstances, the Commissioner may retain the documents, records, laptops, CPUs, and Mobile Phones which were seized but only till the time, the same are required and in any event not later than 30 days after issuance of notice, as required under Section 67(3) of the CGST Act, 2017.

14. In the meanwhile, the Commissioner shall ensure that copies of the documents and data on devices available in the mobile phones, CPUs, laptops and other records, which were seized are made available to the petitioners.

15. It is submitted on behalf of the petitioners that although the petitioners have provided a hard disk of 01 Terabyte, the respondents are compelling the petitioners to give further hard disks.

16. We request the Commissioner to examine this aspect and ensure that the data recorded on the devices is not withheld from the petitioners.

17. The third issue to be examined is whether the petitioners are entitled to the refund of Rs.22,00,000/- which, the petitioners claim, they were compelled to deposit during the course of the search and seizure raid.

18. The learned counsel for the petitioners has referred to the decision of this court in W.P(C) 7860/2022 captioned ***M/s Uflix Industries v. The Additional Director General, Directorate of Revenue Intelligence & Ors***. ***decided on 15.02.2023***, as well as the decision of this Court in W.P.(C) 9834/2022 captioned ***Vallabh Textiles v. Senior Intelligence Officer decided on 20.12.2022***, in support of its contention that the amounts deposited are required to be returned to the petitioners.

19. Mr. Ojha, learned counsel appearing for the respondents, contests the said prayer. However, it is seen that the counter-affidavit filed by the respondents is not on record.

The respondents shall ensure that the same is placed on record before the next date of hearing.

20. List for hearing on the aforesaid question on 20.08.2024, the date already fixed."

2. Thus, the limited question to be addressed is whether the petitioners are entitled to refund of ₹22,00,000/-, which they claim was deposited under compulsion.

3. The learned counsel appearing for the petitioners points out that the challan itself indicates that the deposit was made under protest and in presence of the Goods and Services Tax (GST) Officer. She submits that the GST Officer had compelled the Director of petitioner nos. 1 and 2 (petitioner no.3 - Mr Rakesh Gupta) to make the deposit. He had coerced him to go to the bank and withdraw the money from his personal bank account and deposit the same for the credit of petitioner no.1 company.

4. Mr Ojha, learned counsel appearing for the respondents disputes the same.

5. One of the questions that arises as to what was the necessity of the GST Officer to accompany Mr Rakesh Gupta (petitioner no.3) to the bank.

6. Mr Ojha submits that the officer would have done so to submit a letter to the bank in order to facilitate Mr Rakesh Gupta to withdraw the money from his bank account. He submits that this would be necessary since the bank accounts of the directors of petitioner nos. 1 and 2 were attached.

7. He also points out that the deposit was made not during the course of search and seizure but after the statement of director, Mr Rakesh Gupta, was recorded.

8. It is relevant to note that the challan also indicates that the deposit is voluntary against the entry cause of payments.

9. Given the contentious issues, we do not consider it apposite to issue any directions for refund of the deposit in these proceedings. However, we clarify that the petitioners would be entitled to apply for refund of the same in accordance with law without waiting for the adjudication of the show cause notice.

10. Insofar as the petitioner's request for return of the articles and documents seized during the course of the proceedings are concerned, Mr Ojha states that all hard disks and other articles have been returned except two laptops. He submits that two laptops have been stolen from the office of the GST Authorities and an FIR in this regard had been lodged.

11. We clarify that all rights of the petitioners to seek compensation for the same is reserved.

12. No further orders are required to be passed in this petition. The same is disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 20, 2024
RK

CASE 19 OF 35

Construction Catalysers Private Limited v. The State of Assam & 2 Ors.

Court	Gauhati High Court
Bench	Devashis Baruah, J.
Date	26.09.2024
Case no. / citation	WP(C) 3912/2024 (common order with connected petitions)

Holding in brief

The summary in Form GST DRC-01 with the determination of tax under section 73(3) cannot take the place of the show cause notice under section 73(1) issued by the proper officer. Orders passed without such a notice, and without the hearing required by section 75(4), were quashed, with liberty to proceed afresh.

Paragraphs highlighted

Passages on DRC-01 not being a show cause notice, hearing under section 75(4), and conclusions (A) and (B). Highlighted passages are on compendium pages 275, 280-281.

Status

Final judgment; orders set aside, fresh proceedings permitted.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 257.

GAHC010152562024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3912/2024

CONSTRUCTION CATALYSERS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT VEDH, 484/37, MITRAMANDAL COLONY, PARVATI, PUNE, MAHARASHTRA INDIA- 411009 REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI PRASHANT KUMAR PANDEY, AGED AROUND 34 YEARS, SON OF ARUN KUMAR PANDEY RESIDENT OF VILLAGE BANGARUA, P.O. PRATAPPUR, BAGARUA, DEORIA, UTTAR PRADESH, 274703

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, FINANCE DEPARTMENT, ASSAM, GUWAHATI

2:THE PRINCIPAL COMMISSIONER OF STATE TAX
ASSAM
GUWAHATI

3:THE ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI- A-1
GUWAHATI-A
KAR BHAVAN
GUWAHATI
ASSA

Linked Case : WP(C)/4619/2024

THE ASSAM GRAMIN VIKASH BANK
A REGIONAL RURAL BANK FIRM HAVING ITS WITH PAN- AAAAA7147H
GSTIN- 18AAAAA7147H2ZS
HAVING ITS HEAD OFFICE AT 2ND FLOOR
SHANTI COMPLEX

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G.S.ROAD
BHANGAGARH
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781005 (CURRENT ADDRESS- ADAMS PLAZA
1ST AND 2ND FLOORS
SRIMANTA SHANKARDEV PATH
CHRISTIAN BASTI
GUWAHATI- 781008) AND BRANCHES AT DIFFERENT PLACES IN THE STATE OF ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
ASSAM
GUWAHATI

2:THE PRINCIPAL COMMISSIONER OF STATE TAX
ASSAM
GUWAHATI

3:THE ASSISTANT COMMISSIONER OF STATE TAX
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KAR BHAVAN
GUWAHATI
ASSAM

Linked Case : WP(C)/3933/2024

CONSTRUCTION CATALYSERS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT VEDH
484/37
MITRAMANDAL COLONY
PARVATI
PUNE
MAHARASHTRA INDIA- 411009 REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI PRASHANT KUMAR PANDEY
AGED AROUND 34 YEARS
SON OF ARUN KUMAR PANDEY RESIDENT OF VILLAGE BANGARUA
P.O. PRATAPPUR
BAGARUA
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VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
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ASSAM
GUWAHATI

2:THE PRINCIPAL COMMISSIONER OF STATE TAX
ASSAM
GUWAHATI

3:THE ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI- A-1
GUWAHATI-A
KAR BHAVAN
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ASSAM

Linked Case : WP(C)/4379/2024

M/S NITAI KANGSA BANIK AND ANR
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SONAI ROAD
NEAR HOLY CROSS SCHOOL
SILCHAR
ASSAM- 788006
REPRESENTED BY ITS PROPRIETOR SRI NITAI KANGSA BANIK.

2: NITAI KANGSA BANIK
SON OF SRI SUBAL KANGSA BANIK
AGED ABOUT 53 YEARS
RESIDENT OF RAMCHARAN ROAD
KANAKPUR MAIN ROAD
SILCHAR
DISTRICT- CACHAR- 788006.
VERSUS

THE UNION OF INDIA AND 3 ORS.
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI.

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR

TOWER
NBCC PLAZA
SECTOR- 5
PUSHP VIHAR
NEW DELHI- 110017.

3:THE PRINCIPAL COMMISSIONER
STATE GST
KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE ASSISTANT COMMISSIONER
OF STATE TAX
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SILCHAR
ASSAM

Linked Case : WP(C)/4618/2024

THE ASSAM GRAMIN VIKASH BANK (FORMERLY KNOWN AS LANGPI DEHANGI RURAL BANK)
A REGIONAL RURAL BANK FIRM HAVING ITS WITH PAN- AABCL0289J
GSTIN- 18AABCL0289J1ZB
HAVING ITS HEAD OFFICE AT 1ST FLOOR
DWCCM SOCIETY BUILDING
G.S.ROAD
DIPHU MAIN
DIPHU
NAGAON
ASSAM
782460 (CURRENT ADDRESS- THE ASSAM GRAMIN VIKASH BANK
ADAMS PLAZA
SRIMANTA SHANKARDEV PATH
CHRISTIAN BASTI
GUWAHATI- 781005) AND BRANCHES AT DIFFERENT PLACES IN THE STATE OF ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
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3:THE ASSISTANT COMMISSIONER OF STATE TAX
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Linked Case : WP(C)/3910/2024

AURORA FINE ARTS
A PARTNERSHIP FIRM HAVING ITS GSTIN- 18AAJFA5773B1ZI
HAVING ITS OFFICE AND WORKS SHOP SITUATED AT 38 INDUSTRIAL ESTATE
BAMUNIMAIDAN
M G ROAD
GUWAHATI
KAMRUP METROPOLITAN
ASSAM
781021 REPRESENTED BY ONE OF ITS PARTNERS SRI MUNIN MISRA
AGED ABOUT 63 YEARS
SON OF LATE JAGANATH MISRA
RESIDENT OF HOUSE NO.4
BAIKUNTHPUR
GEETANAGAR
GUWAHATI 781021
KAMRUP (METRO) ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
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2:THE PRINCIPAL COMMISSIONER OF STATE TAX
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3:THE ASSISTANT COMMISSIONER OF STATE TAX
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ASSAM

Advocate for the Petitioners : Ms. Nitu Hawelia, Advocate
Ms. M. L. Gope, Advocate
Mr. A. Goyal, Advocate

Advocate for the Respondents : Mr. B. Gogoi, Stnading Counsel
Finance and Taxation
Dr. B. N. Gogoi, Advocate
Ms. K. Phukan, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 26.09.2024

Date of Judgment : 26.09.2024

JUDGMENT AND ORDER (ORAL)

Heard Ms. Nitu Hawelia, the learned counsel appearing on behalf of the petitioners in WP(C) No.4379/2024 as well as Mr. A. Goyal, the learned counsel appearing on behalf of the petitioners in WP(C) No.3912/2024; WP(C) No.3910/2024; WP(C) No.3933/2024; WP(C) No.4618/2024 and WP(C) No.4619/2024. I have also heard Mr. B. Gogoi, the learned Standing Counsel of the Finance and Taxation Department of the Government of Assam.

2. Before dealing with the issue involved, this Court finds it relevant to briefly note the facts involved in the instant batch of writ petitions which are taken up for adjudication.

PROPOSITION OF FACTS AS PER PLEADINGS AND INSTRUCTIONS

WP(C) No.3912/2024

3. In this case, the petitioner was issued a Summary of the show cause in GST DRC-01 along with an attachment of the determination of tax on

28.09.2023 for the tax period 2017-18. The petitioner submitted a reply on 31.10.2023 stating inter-alia that the DGGI (CGST) had initiated proceedings of enquiry in 2020 in respect to the determination of tax regarding output liability and eligible ITC for the period covered under DRC-01. It was further mentioned that in terms with Section 6 (2) (b) of the Central Goods and Services Tax Act, 2017 (for short, 'the Central Act') parallel proceedings on the same subject matter cannot run, and as such, requested to drop the proceedings. In the said reply, the petitioner also filled in the Column "Option for personal hearing" as "Yes". Subsequent thereto, on 30.12.2023, an order was passed and the Summary of the Order in GST DRC-07 was forwarded to the petitioner along with an attachment wherein details were provided. It is seen that both in the Summary of the Order dated 30.12.2023 in GST DRC-07 as well as in the attachment, thereto, the reason assigned was mentioned that the reply was not satisfactory. It is worth noting herein that both the attachments, i.e. the attachments to the GST DRC-01 as well as the attachment to the GST DRC-07 were not authenticated by any signature of the Proper Officer.

WP(C) No.3910/2024

4. In this writ petition, the petitioner was issued a Summary of Show Cause dated 28.09.2023 in GST DRC-01 for the tax period from July 2017-March 2018. Along with the said Summary of Show Cause there was an attachment as regards the determination of tax. It is the case of the petitioner that as there was no Show Cause Notice attached to the Summary of the Show Cause Notice dated 28.09.2023 in the portal, the petitioner did not submit any reply. Subsequent thereto, an order was

passed on 25.12.2023 in GST DRC-07. The manner in which the tax was determined was mentioned in the attachment. The reason assigned is that the assessee failed to attend the personal hearing. It is relevant to mention that the attachment to both the Summary of the Show Cause Notice as well as the Summary of the Order uploaded in GST DRC-01 and GST DRC-07 were not authenticated by any signature of the Proper Officer.

WP(C) No.4618/2024

5. In this case, the petitioner herein was issued a Summary of the Show Cause Notice dated 29.09.2023 in the GST DRC-01. In the said Summary of the Show Cause Notice, it was mentioned that the Show Cause Notice was attached. Along with the said Summary of the Show Cause Notice, there was an attachment to the determination of tax dated 29.09.2023. The petitioner did not reply to the Show Cause Notice in view of the fact that there was no Show Cause Notice attached to the Summary of the Show Cause Notice. Pursuant thereto, a Summary of the Order dated 31.12.2023 was issued in GST GST DRC-07. To the said Summary of the Order uploaded in GST DRC-07, there was an attachment stating the manner in which the determination was made. The reason assigned for passing of the said order was that the taxpayer had not replied or contested the notice, and as such, had been agreed with the terms of the notice. It is relevant to mention that the attachments to both the GST DRC-01 as well as the GST DRC-07 did not contain any signature of the Proper Officer.

WP(C) No.4619/2024

6. In the this case, the petitioner herein was issued a Summary of the

Show Cause Notice dated 28.09.2023 in the GST DRC-01. In the said Summary of the Show Cause Notice, it was mentioned that the Show Cause Notice was attached. Along with the said Summary of the Show Cause Notice, there was an attachment to the determination of tax dated 28.09.2023. The petitioner did not reply to the Show Cause Notice in view of the fact that there was no Show Cause Notice attached to the Summary of the Show Cause Notice. Pursuant thereto, a Summary of the Order dated 28.12.2023 was issued in GST DRC-07. To the said Summary of the Order uploaded in GST DRC-07, there was an attachment stating the manner in which the determination was made. The reason assigned for passing of the said order was that the taxpayer had not replied or contested the notice, and as such, had been agreed with the terms of the notice. It is relevant to mention that the attachments to both the GST DRC-01 as well as the GST DRC-07 did not contain any signature of the Proper Officer.

WP(C) No.3933/2024

7. In this case, the petitioner was issued a Summary of the Show Cause in GST DRC-01 along with an attachment of the determination of tax on 27.09.2023 for the tax period 2017-18. The petitioner submitted a reply on 31.10.2023 stating inter-alia that the DGGI (CGST) had initiated proceedings of enquiry in 2020 in respect to the determination of tax regarding output liability and eligible ITC for the period covered under GST DRC-01. It was further mentioned that in terms with Section 6 (2) (b) of the Central Act parallel proceedings on the same subject matter cannot run, and as such, requested to drop the proceedings. In the said reply, the petitioner also filled in the Column "Option for personal hearing" as "Yes".

Subsequent thereto, on 31.12.2023, an order was passed and the Summary of the Order in GST DRC-07 was forwarded to the petitioner along with an attachment wherein details were provided. It is seen that both in the Summary of the Order dated 31.12.2023 in GST DRC-07 as well as in the attachment, thereto the reason assigned was mentioned that the reply was not satisfactory. It is worth noting herein that both the attachments, i.e. the attachments to the GST DRC-01 as well as the attachment to the GST DRC-07 were not authenticated by any signature of the Proper Officer.

WP(C) No.4379/2024

8. In the instant case, the petitioners were issued a Summary of the Show Cause dated 29.09.2023. It was mentioned in the said GST DRC-01 that the Show Cause Notice was attached. However, it is the case of the petitioners that there was no show cause notice, and as such, the petitioners did not submit any reply. However, subsequently, on 27.12.2023, a Summary of the Order in GST DRC-07 was issued. The computation on the basis of which the GST DRC-07 was issued was attached to the GST DRC-07. The reason for passing the said order was that as no payment had been made within 30 days of the issuance of notice, and as such, on the basis of the documents available with the Department and the information furnished by the petitioners.

9. It is relevant to take note of that this Court had issued notice pursuant to the filing of the writ petitions and enquired with the learned counsel appearing on behalf of the respondent authorities as to whether there were Show Cause Notices issued apart from the Summary of the Show Cause Notice in GST DRC-01, and further, as to whether there were

Show Cause Notices attached as mentioned in the Summary of the Show Cause Notice in GST DRC-01. In reply to the above queries so made by this Court, affidavits have been filed as well as instructions placed that the Proper Officer had only issued the Summary of the Show Cause Notice in GST DRC-01 along with the determination of tax. There were no separate Show Cause Notices issued though reflected in Summary of the Show Cause Notices in GST DRC-01. During the course of the hearing, Mr. B. Gogoi, the learned Standing Counsel for the Finance and Taxation Department had placed an instruction issued by the Joint Commissioner of Taxes, Assam wherein it has been mentioned that the attachments to the GST DRC-01 is the Show Cause Notices and in the said attachments, the case of under declared tax amount were given along with reasons thereof in order to give the petitioners an opportunity to clarify his or their case of under declared tax etc. The said instruction is kept on record and marked with the letter "X".

10. In the background of the above pleadings and instructions placed, this Court would like to take note of the contentions made by the learned counsels appearing on behalf of the parties.

CONTENTIONS OF THE PARTIES

11. Mr. A. Goyal, the learning counsel appearing on behalf of the petitioners submitted the following:-

(A) It is the requirement in terms of Rule 142 of the Central Goods and Services Tax Rules, 2017 (for short, 'the Rules of 2017') that the notice under Section 73 has to be issued and a summary thereof is to be additionally issued electronically in Form GST DRC-01. The

learned counsel for the petitioners submitted that under no circumstances the attachment to the GST DRC-01 can be said to be a Show Cause Notice in as much as in the said attachment, there is no mention that the petitioner is required to show cause. Additionally, he submitted that the said attachment to the DRC-01 does not contain the signature of the Proper Officer and it is the mandate of Rule 26 of the Rules of 2017 that the Show Cause Notice had to be authenticated with digital signature or through E-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in that behalf. In that regard, the learned counsel for the petitioner submitted that the learned Division Bench of the Telangana High Court in the case of ***M/s Silver Oak Villas LLP vs. the Assistant Commissioner ST*** {WP(C) No.6671/2024} vide its judgment and order dated 14.03.2024 had dealt with Rule 26 of the Rules of 2017 and categorically opined that since the impugned order therein was an unsigned document, it lost its efficacy in the light of Rule 26 (3) of the Rules of 2017 as well as the Telangana Goods and Services Tax Act, 2017 and the Rules framed therein under. It was also observed therein that the Show Cause Notice as also the impugned order would not be sustainable and deserved to be set aside and quashed. The learned counsel further submitted that in the case of ***A.V. Bhanoji Row vs. Assistant Commissioner (ST) & Others***, reported in ***(2024) 123 GSTR 432***, the learned Division Bench of the Andhra Pradesh High Court had observed that as there was no signature of the Proper Officer, the

same was treated to be void and inoperative.

(B) The learned counsel further submitted that in the case of ***Nkas Services Private Limited vs. State of Jharkhand & Others***, reported in ***(2022) 99 GSTR 145***, the learned Division Bench of the Jharkhand High Court had dealt with the question as regards issuance of a Summary of Show Cause Notice in GST Form DRC-01 and held that the Summary of the Show Cause Notice as issued in Form GST DRC-01 cannot be a substitute to the requirement of a proper Show Cause Notice. The learned counsel had also referred to another judgment of the Karnataka High Court in the case of ***LC Infra Projects Pvt. Limited vs. Union of India and Others***, reported in ***(2020) 73 GSTR 248***.

12. Ms. Nitu Hawelia, the learned counsel while supporting the submissions of Mr. A. Goyal, the learned counsel additionally submitted that in terms of Section 75 (4) of the Central Act as well as also the Assam Goods and Services Tax Act 2017 (herein after referred to as 'the State Act'), there is a requirement of giving an opportunity of hearing when a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person. The learned counsel submitted the materials on records which were placed by Mr. A. Goyal, the learned counsel, would show that in WP(C) No.3912/2024 and WP(C) No.3933/2024, the petitioners therein had submitted their reply and in the said reply the petitioners had sought for an opportunity of hearing as would be apparent from a perusal of the reply enclosed to the writ petitions. The learned counsel submitted that even in a case where an adverse decision is contemplated to be passed,

there is a requirement for providing an opportunity of hearing irrespective of whether the petitioners seek such an opportunity. The learned counsel referring to the Summary of the Show Cause Notice issued in GST DRC-01 submitted that there is no mention whatsoever about the date of hearing and the Column had been left blank. She submitted that use of the word 'or' in Section 75(4) of the Central Act as well as State Act in between the words '***when a request is received in writing from the person chargeable with tax or penalty'*** and '***where any adverse decision is contemplated against such person'*** clearly shows the legislative intent to the effect that irrespective of a request made or not but when an adverse decision is contemplated an opportunity for hearing is mandated. The learned counsel for the petitioners had referred to the judgment of the learned Division Bench of the Chhattisgarh High Court in the case of ***Mahindra & Mahindra Limited vs. Union of India and Others***, (WA No.172/2024) delivered on 10.04.2024 wherein the learned Division Bench dealt with the scope and ambit of Section 75 (4) of the Central Act and observed that when the statute contains a mandate of hearing which is a synonym to natural justice, it cannot be given a go by or can be made porous. The learned counsel for the petitioners therefore submitted that in the instant cases as the impugned orders have been passed without giving a proper opportunity of hearing as mandated under Section 75 (4) of both the Central Act as well as the State Act, the impugned orders are liable to be interfered with.

13. Per contra, Mr. B. Gogoi, the learned standing counsel appearing on behalf of the Finance and Taxation Department of the Government of Assam submitted that the respondent authorities have issued the

Summary of the Show Cause Notice in Form DRC-01 which was accompanied by the determination of tax which as per the respondents would have provided all the details so that the petitioners could have submitted the reply. The learned counsel, however, fairly submitted that there is no separate Show Cause Notice apart from the determination of tax enclosed to the Summary of the Show Cause Notice. On the question of lack of signatures in the attachments to the GST DRC-01 as well as the GST DRC-07, the learned counsel fairly submitted that the materials on record do not show that there is/are any signature(s) in the attachment to the Summary to the Show Cause Notice as well as Summary to the Order issued in Forms GST DRC-01 and GST DRC-07 respectively. He however submitted that in the attachments it is mentioned as 'Sd- Proper Officer'. The learned counsel further submitted that when the Summary of the Show Cause Notice as well as the Summary of the Order are uploaded in GST DRC-01 and GST DRC-07, the same are duly authenticated in the portal with digital signatures and without such authentication, the portal cannot be operated.

ANALYSIS AND DETERMINATION

14. I have heard the learned counsels for the petitioners as well as the respondents. From the materials on record as well as the submissions so made by the learned counsels for the petitioners it appears that the petitioners have approached this Court in the present batch of writ petitions alleging infraction to the various provisions of the Central Act, the State Act as well as the Rules framed thereunder. It is also the case of the petitioners that the principles of natural justice have been violated as is not only a statutory mandate but also violative of Article 21 of the

Constitution. On the basis of the submissions, the analysis and determination is required to be made broadly on the following headings:-

(i) Whether Show Cause Notices were issued prior to passing the Impugned Order under Section 73 (9) of the State Act?

(ii) Whether the determination of tax as well as the Order attached to the Summary of the Show Cause Notice in GST DCR-01 and Summary of the Order in GST DCR-07 can be said to be the Show Cause Notice and Order respectively?

(iii) Whether the impugned orders under Section 73 (9) of the State Act is in conformity with Section 75(4) of the State Act and is in consonance with the principles of natural justice?

(i) Whether Show Cause Notices were issued prior to passing the Impugned Order under Section 73 (9) of the State Act.

15. From the perusal of the records, it would show that in the Summary of the Show Cause Notices issued in GST DRC-01 to the petitioners in the batch of writ petitions, there is a mention therein that there is a Show Cause Notice attached. It is the case of the respondents that the said attachment wherein determination of tax is mentioned is the Show Cause Notice. The question therefore arises as to whether the said attachment can be said to be a Show Cause Notice as per the mandate of both the Central Act as well as the State Act and the Rules made therein under. It would be apposite to take note of that in all these cases, the Summary of the Show Cause Notices have been issued in terms with Section 73.

16. At this stage, this Court would briefly take note of Section 73. A perusal of Section 73 would show that the said provision is set into motion

when it appears to the Proper Officer that:-

(a) Any tax has not been paid; or

(b) Any tax short paid; or

(c) Any tax erroneously refunded; or

(d) Where input tax credit had been wrongly availed or utilized.

for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax.

Taking into account that it is only in the circumstances referred to above, the Proper Officer is required to issue a Show Cause Notice, therefore, the Show Cause Notice is required to specifically mention the reason(s) and the circumstances why the provision of Section 73 had been set into motion. The person against whom the said Show Cause Notice is issued would only have an adequate opportunity to submit a representation justifying that the prerequisites for issuance of Show Cause Notice is not there if and only if the reason(s) for issuance of the Show Cause is specifically mentioned in the Show Cause Notice.

Section 73 further stipulates that upon consideration of the representations, if any, the Proper Officer shall pass the order under Section 73 (9) determining the amount of tax, interest and penalty.

It is also apposite to mention that Section 73 (2) and Section 73 (10) are interconnected in as much as Section 73 (10) stipulates that within three years from the due date for furnishing the annual return for the financial year, the order under Section 73 (9) can be passed. In terms with Section 73 (2), the Show Cause Notice is to be issued within three months

prior to the time limit prescribed in Section 73 (10).

In addition to the above, it would also show from conjoint reading of Sub-section (1) (2) (3) and (4) of Section 73 that the legislature had categorically distinguished the Show Cause Notice from the Statement which is required to be issued by the Proper Officer or in other words, irrespective of Statement to be issued in terms with Sub-section (3) of Section 73, there is a requirement of issuance of a Show Cause Notice by the Proper Officer.

17. At this stage, it is also pertinent to mention that in Section 73, there is no mention of issuance of a Summary of Show Cause Notice. The requirement of issuance of a Summary of the Show Cause Notice is seen in Rule 142 of the Rules of 2017. Rule 142 (1) (a) and (b) is relevant for which the same is quoted herein below:-

> "***142. Notice and order for demand of amounts payable under the Act***.*-(1) The proper officer shall serve, along with the*
>
> *(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,*
>
> *(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable."*

From a perusal of the above quoted Rule, it would show that in addition to the Show Cause Notice to be issued under Section 73 (1) and the Statement of determination of tax under Section 73 (3), there is an additional requirement of issuance of a Summary of the Show Cause

Notice in GST DRC-01 and the Summary of the Statement in GST DRC-02. The natural corollary from the above analysis is that the issuance of the Show Cause Notice and the Statement of determination of tax by the Proper Officer are mandatory requirement in addition to the Summary of Show Cause Notice in GST DRC-01 and Summary of the Statement in GST DRC-02.

18. The judgment of the learned Division Bench of the Jharkhand High Court in the case of ***Nkas Services Private Limited*** (supra) had also dealt with a similar issue and categorically held that a Summary of a Show Cause Notice issued under GST DRC-01 cannot substitute the requirement of a proper Show Cause Notice. Similarly, in the case of ***LC Infra Projects Pvt. Limited*** (supra), the learned Single Judge of the Karnataka High Court had also observed that the issuance of a Show Cause Notice is *sine qua non* to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules.

19. From the above analysis, this Court is of the view that the Summary of the Show Cause Notice along with the attachment containing the determination of tax cannot be said to be a valid initiation of proceedings under Section 73 without issuance of a proper Show Cause Notice. The Summary of the Show Cause Notice is in addition to the issuance of a proper Show Cause Notice. Under such circumstances, this Court is of the unhesitant opinion that the impugned orders challenged in the instant batch of writ petitions are contrary to the provisions of Section 73 as well as Rule 142 (1) (a) of the Rules as the said impugned Orders were passed with issuance of a proper Show Cause Notice.

(ii) Whether the determination of tax as well as the order attached to the Summary to the Show Cause Notice in GST DRC-01 and the Summary of the Order in GST DRC-07 can be said to be the Show Case Notice and Order respectively.

20. While deciding supra, this Court duly dealt with what would constitute a Show Cause Notice, the Statement as per Section 73 (3) as well as the Summary to the Show Cause Notice in GST DRC-01 and Summary of the Statement in GST DRC-02. This Court had also opined above that the statement to be provided by the Proper Officer in terms with Section 73 (3) cannot be said to be a Show Cause Notice which is required to be issued in terms with Section 73 (1). Therefore, the submission of the respondents that the statement attached to the Summary of the Show Cause Notice is the Show Cause Notice is completely misconceived and contrary to Section 73 (1) and 73 (3). Be that as it may, a very pertinent contention had been made by the learned counsel appearing on behalf of the petitioners to the effect that the attachments to both the Summary of the Show Cause Notice and Summary of the Order have no value as the same contains no authentication of the Proper Officer. In that regard, the learned counsels referred to Rule 26 (3) of the Rules and the judgment in the cases of ***M/s Silver Oak Villas LLP*** (supra) and ***A.V. Bhanoji Row*** (supra).

21. Rule 26 (3) of the Rules of 2017 categorically stipulates as to how notices, certificates and orders are to be authenticated. The said Sub-Rule is reproduced herein under:-

> *"26.(3) All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer*

authorised to issue such notices or certificates or orders, through digital signature certificate [or through E-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.]"

A perusal of the above quoted Sub-Rule would show that notices, certificates and orders under the provisions of Chapter III shall be issued electronically by the Proper Officer or any other officer authorized to issue such notices or certificates or orders through digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in that behalf. It is relevant to take note of that Chapter III of the Rules of 2017 pertains to **Registration** whereas in respect to **Demand and Recovery**, it is Chapter XVIII.

22. Now therefore a question arises as to whether Rule 26 (3) can be applicable to Chapter-XVIII when the said Sub-Rule on refers to Chapter-III. In the case of ***M/s Silver Oak Villas LLP*** (supra), the learned Division Bench of the Telangana High Court had applied Rule 26 (3) of the Rules of 2017 even to Chapter-XVIII of the Rules of 2017. In the case of ***A.V. Bhanoji Row*** (supra), the learned Division Bench of the Andhra Pradesh High Court held that the signatures cannot be dispensed with and Sections 160 and 169 cannot save an order, notice, communication which did not contain a signature. In another judgment of the learned Division Bench of Delhi High Court in the case of ***Railsyls Engineers Private Limited vs. Additional Commissioner of Central goods and Services Tax (Appeals-11) and Anr.***, reported in ***(2023) 112 GSTR 143***, the Delhi High Court held that there was a requirement of at least putting the digital signatures on the

Show Cause Notice and Order in Original.

23. A perusal of the provisions of Section 73 would show that the Show Cause Notice is required to be issued by the Proper Officer, the Statement under Section 73 (3) is to be issued by the Proper Officer as well as the Order under Section 73 (9) is required to be passed by the Proper Officer. Section 2 (91) of the Act defines who is the Proper Officer meaning thereby either the Commissioner or the Officer who had been specifically entrusted by the Commissioner. As it is the statutory mandate that it is only the Proper Officer who has the authority to issue Show Cause Notice and the Statement and pass the order, the authentication in the Show Cause Notice, Statement as well as the Order by the Proper Officer is a must and failure to do so, makes the Show Cause Notice, Statement and Order ineffective and redundant.

24. It is also important to note that the Act only stipulates that notice would be issued and order would be passed by the Proper Officer. The manner in which the Proper Officer would authenticate the notice(s) or the order(s) in so far as other Chapters of the Rules of 2017 is silent except Chapter-III. Taking into account the utmost necessity of the authentication by the Proper Officer, this Court is of the opinion unless appropriate insertion are made in the Rules or notification are issued as per the directions of the Board to fill the void in the Rules of 2017, the authentication in the manner stipulated in Rule 26 (3) of the Rules of 2017 has to be applied as and when the Proper Officer is required to issue notice or Statement and pass Order in terms with the Act.

(iii) Whether the impugned orders under Section 73 (9) of the State Act is in conformity with Section 75 (4) of the State Act and is in consonance with the principles of natural justice.

25. This Court has duly perused the Summary of the Show Cause Notices wherein the petitioners were only asked to file their reply on a date specified. There was no mention as to the date of hearing and the Column was kept blank. In two writ petitions, i.e. WP(C) No.3912/2024 and WP(C) No.3933/2024, the petitioners had sought for an opportunity of hearing which was however not given. In this regard, if this Court takes note of Section 75 (4) of both the Central Act as well as State Act, it would be seen that it is the mandate of the said provision that an opportunity of hearing should be granted when a request is received in writing from the person chargeable with tax or penalty or when any adverse decision is contemplated against such person. The mandate of Section 75 (4) of both the Central and State Act are safeguards provided to the assessees so that they can have a say in the hearing process.

26. It is also seen that in the reply to be submitted in Form GST DRC-06, there is an option given for personal hearing at Sl. No.7. As stated above, the petitioners in WP(C) No.3912/2024 and WP(C) No.3933/2024 have specifically filled up the Column as "Yes" wherein the option for personal hearing was mentioned. Inspite of that, there was no opportunity of hearing afforded to those petitioners.

27. The learned Division Bench of the Chhattisgarh High Court in the case of ***Mahindra & Mahindra Limited*** (supra) had categorically observed that when the statute contains a mandate of hearing, the same has to be

granted, else it would render the provision porous.

28. This Court is of the opinion that when the statute is clear to provide an opportunity of hearing, there is a requirement of providing such opportunity. In fact a perusal of the Form GST DRC-01 enclosed to the writ petitions shows details have been given as regards the date by which the reply has to be submitted; date of personal hearing; time of personal hearing and venue of personal hearing. It is seen that in the Summary of the Show Cause Notice only the date for submission of reply has been mentioned. In respect to other details as stated above have been mentioned to as 'NA'. It may be that the Proper Officer assumed that based on the reply he/she may proceed with the adjudication depending as to whether the person to whom the notice is issued had opted for personal hearing or not. But in a case where no reply is filed, a question arises whether the Proper Officer can pass an adverse order without providing an opportunity for hearing. The answer has to be in the negative else it would render the second part of Section 75 (4) redundant.

CONCLUSION

29. On the basis of the above analysis and determination, this Court disposes of the instant batch of writ petitions with the following observations and directions:-

(A) The Summary of the Show Cause Notice in GST DRC-01 is not a substitute to the Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act as well as the State Act. Irrespective of issuance of the Summary of the Show Cause Notice, the Proper Officer has to issue a Show Cause Notice to put the

provision of Section 73 into motion.

(B) The Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act or State Act cannot be confused with the Statement of the determination of tax to be issued in terms with Section 73 (3) of the Central Act or the State Act. In the instant writ petitions, the attachment to the Summary of Show Cause Notice in GST DRC-01 is only the Statement of the determination of tax in terms with Section 73 (3). The said Statement of determination of tax cannot substitute the requirement for issuance of the Show Cause Notice by the Proper Officer in terms with Section 73 (1) of the Central or the State Act. Under such circumstances, initiation of the proceedings under Section 73 against the petitioners in the instant batch of writ petitions without the Show Cause Notice is bad in law and interfered with.

(C) It is also noticed that the Show Cause Notice and the Statement in terms with Section 73 (1) and 73 (3) of both the Central Act or the State Act respectively are required to be issued only by the Proper Officer as defined in Section 2 (91). Additionally, the order under Section 73 (9) is also required to be passed by the Proper officer. The Summary of the Show Cause Notice, the Summary of the Statement under Section 73 (3) and the Summary of the Order passed in terms with Section 73 (9) are to be issued in GST DRC-01, GST DCR-02 and GST DRC-07 respectively. The issuance of the Summary of the Show Cause Notice, Summary of the Statement and Summary of the Order do not dispense with the requirement of issuance of a proper Show Cause Notice and Statement as well as

passing of the Order as per the mandate of Section 73 by the Proper Officer. As initiation of a proceedings under Section 73 and passing of an order under the same provision have consequences. The Show Cause Notice, Statement as well as the Order are all required to be authenticated in the manner stipulated in Rule 26 (3) of the Rules of 2017.

(D) The Impugned Orders challenged in the writ petitions are in violation of Section 75 (4) as no opportunity of hearing was given as already discussed herein above.

(E) The impugned orders challenged in the instant batch of writ petitions, the details of which are given in the ***Appendix*** attached to the instant judgment are set aside and quashed.

(F) This Court also cannot be unmindful of the fact that it is on account of certain technicalities and the manner in which the impugned orders were passed, this Court interfered with the impugned orders and hence set aside and quashed the same. It is also relevant to take note of that the respondent authorities were under the impression that issuance of attachment of the determination of tax which was attached to the Summary of the Show Cause Notice would constitute a valid Show Cause Notice. Under such circumstances, in the interest of justice, this Court while setting aside the impugned Orders-in-Original as detailed out in the ***Appendix***, grants liberty to the respondent authorities to initiate *de novo* proceedings under Section 73, if deemed fit for the relevant financial year in question. This Court further observes and directs that the period from the date of issuance the Summary of the Show

Cause Notices upon the petitioners till the date a certified copy of the instant judgment is served upon the Proper Officer, be excluded while computing the period prescribed for passing of the order under Section 73 (10) of the Central Act as well as the State Act as the case may be.

30. With the above observations and directions, the writ petitions stand disposed of.

JUDGE

APPENDIX

1. The impugned Order-in-Original bearing No.ZD1812230625885 dated 30.12.2023 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.3912/2024 is set aside and quashed.

2. The impugned Order-in-Original bearing No.ZD1812230420403 dated 25.12.2023 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.3910/2024 is set aside and quashed.

3. The impugned Order-in-Original bearing No.ZD181223067126I dated 25.12.2023 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.3933/2024 is set aside and quashed.

4. The impugned Order-in-Original bearing No.ZD181223047773B dated 27.12.2023 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.4379/2024 is set aside and quashed.

5. The impugned Order-in-Original bearing No.ZD1812230657747 dated 31.12.2023 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.4618/2024 is set aside and quashed.

6. The impugned Order-in-Original bearing No.ZD181223053533L dated 28.12.2023 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.4619/2024 is set aside and quashed.

Comparing Assistant

CASE 20 OF 35

M/s Daksh Overseas Inc. & Anr. v. The Principal Commissioner of Customs (Import) & Anr.

Court	High Court of Delhi
Bench	Tara Vitasta Ganju, J.
Date	22.01.2025
Case no. / citation	W.P.(C) 4895/2020

Holding in brief

The Order-in-Original was passed without supplying relied-upon and non-relied-upon documents. The Respondent conceded the breach of natural justice, the order was set aside and the matter sent for de novo adjudication, with a hearing and a reasoned speaking order within 12 weeks.

Paragraphs highlighted

Paras 2, 5 and 6. Highlighted passages are on compendium pages 286-288.

Status

Final order; matter remanded for de novo adjudication.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 286.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22.01.2025

\+ **W.P.(C) 4895/2020**

M/S DAKSH OVERSEAS INC. & ANR. .....Petitioners

Through: Mr. Prem Ranjan Kumar, Adv.

versus

THE PRINCIPLE COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Ms. Anushree Narain, Sr. SC with Mr. Ankit Kumar, Adv. for R-1
Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Mr. Shivang Chawla, Advs. for R-2

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioners impugning Order-in-Original No.07/2020/M.K.S/PR.COMMR./ICD/-IMPORT/TKD dated 04.03.2020 passed by Respondent No.1 [hereafter referred to as 'Impugned Order'] for violation of principles of natural justice and to provide all relied upon/non-relied upon documents in relation to Show Cause Notice dated 28.03.2013.

2. The grievance of the Petitioners is that the Impugned Order was passed without providing him the relied upon/non-relied upon documents or giving them the opportunity of being heard and thus principles of natural justice were violated by Respondent No.1.

2.1 These contentions of the Petitioners are refuted by the learned Counsel for Respondent No.1.

3. A Coordinate Bench of this Court dated 05.08.2020 had stayed the operation of the Impugned Order. The stay has continued since then.

4. Learned Counsel for the Petitioners submits that during the pendency of the proceedings, Respondent No.1 has now provided the relied upon/non-relied upon documents to the Petitioners.

5. Concededly thus the contention of the Petitioner that the principles of natural justice were not followed is correct. Given this position, this Court deems it apposite to pass the following directions:

(i) The Impugned Order dated 04.03.2020 passed by Respondent No.1 is set aside;

(ii) The Petitioners and/or his authorized representative will be given an opportunity to be present for a hearing on a date to be mutually decided by the parties;

(iii) The Petitioners are permitted to produce any additional facts or documents in support of their contentions, at the time of the hearing before the concerned Authority;

(iv) In the event, if it is deemed necessary, that there is a need for more than one hearing, the Petitioners and Respondent No.1 may mutually schedule such additional hearings amongst themselves as well;

(v) The Respondent No.1 shall ensure that any additional documents/information needed, are obtained from the Petitioners expeditiously so as not to delay adjudication;

(vi) Once the hearing in the matter is concluded, the Respondent No.1 shall pass a reasoned Speaking Order within a period of 12 weeks from the date of such hearing;

(vii) The Speaking Order shall be communicated to the Petitioners under acknowledged postal service and e-mail.

6 It clarified that the proceedings shall be conducted *de novo* by the Respondent No.1. All rights and contentions of the parties are left open in this regard.

7. Needless to add, that in the event the Petitioners are aggrieved with the order passed by the Respondent No.1, they are at liberty to appropriate steps in accordance with the law.

8. The present Petition is accordingly disposed of in the aforesaid directions. Pending Application stands closed.

9. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 22, 2025/jn

Click here to check corrigendum, if any

CASE 21 OF 35

Sandeep Sandha v. The Joint Commissioner of Customs (Exports)

Court	High Court of Delhi
Bench	Prathiba M. Singh and Dharmesh Sharma, JJ.
Date	06.02.2025
Case no. / citation	W.P.(C) 161/2025

Holding in brief

The petitioner alleged that the SCN and RUDs were not provided, and cross-examination was refused. The Court noted that he had not filed a reply, held that the order was appealable and that all these grounds can be raised before the Appellate Authority, and dismissed the petition with 30 more days to appeal.

Paragraphs highlighted

Paras 11 to 16. Highlighted passages are on compendium pages 292-293.

Status

Final order; petition dismissed with liberty to appeal.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 290.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th February, 2025

\+ **W.P.(C) 161/2025 & CM APPL. 728/2025**

SANDEEP SANDHA .....Petitioner

Through: Mr. Prem Ranjan Kumar, Adv.

versus

THE JOINT COMMISSIONER OF CUSTOMS (EXPORTS) .....Respondent

Through: Mr. Harpreet Singh, Senior Standing Counsel for the Respondents along with Ms. Suhani Mathur and Mr. Shivang Chawla

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present writ petition is filed by the Petitioner-Sandeep Sandha under Article 226 of the Constitution of India seeking to set aside the ***Order in Original No. 92/2024/Prateek Bhatia/JC/Export/ICD/TKD*** dated 06th December, 2024.

3. The Petitioner submits that, a show cause notice (hereinafter, '*SCN*') was issued on 22nd October, 2019 in respect of exports made through ICD Tughlakabad, New Delhi as part of a common investigation. However, the Petitioner submits that he had not received the same. He further submits that he became aware of the SCN only upon receiving the personal hearing notice dated 16th October, 2023. The Petitioner submits that he, thereafter, made multiple requests to the Respondent-Department for providing the copies of

the SCN and relied upon documents (hereinafter, '*RUDs*') which were not heeded to.

4. It is the case of the Petitioner that the Respondent-Department had provided the said SCN and RUDs to the Petitioner only on the personal hearing conducted on 25th September, 2024.

5. The grievance of the Petitioner is that though the SCN is of 2019, a proper personal hearing was conducted only on 25th September, 2024.

6. Further it is submitted on behalf of the Petitioner that he was not provided sufficient time to file a reply on the said personal hearing dated 25th September, 2024.

7. A letter was filed by the Petitioner on 10th October, 2024 and again on 30th November, 2024 seeking permission to cross examine the persons who had given statements against the Petitioner, and the impugned order in original has been passed without considering the same.

8. Relying on the above said submissions, Mr. Prem Ranjan, the ld. Counsel for the Petitioner submits that the impugned order is defective as -

(i) there is substantial delay in adjudication;

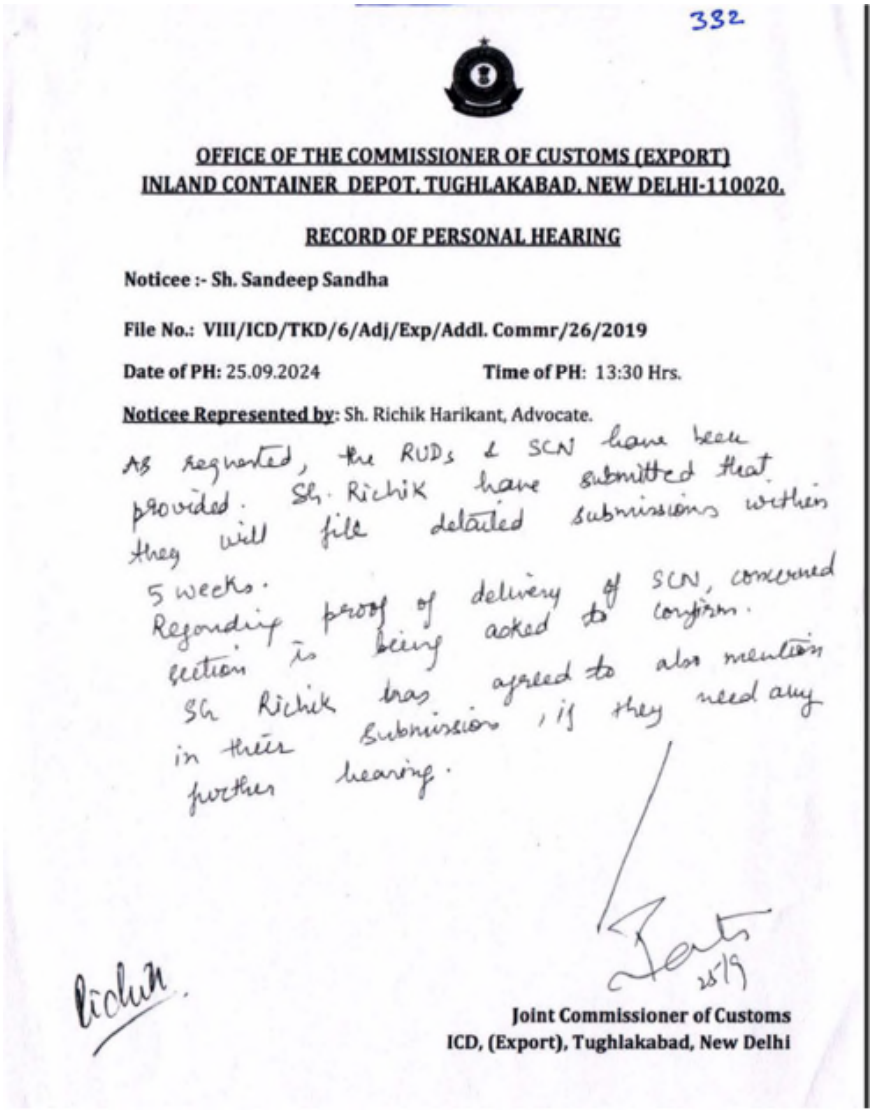
(ii) the SCN and the RUDs were not provided at the first instance;

(iii) no proper opportunity was given for filing of a reply; and

(iv) no permission was also granted to conduct cross examination.

9. Mr. Harpreet Singh, ld. Senior Standing Counsel for the Respondent on the other hand submits that adequate opportunity was given, however, the Petitioner did not avail of the same.

10. Heard. The record of proceedings dated 25th September, 2024 shows that the Petitioner was given an opportunity to file detailed submissions within five weeks. The said order is extracted below:



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OFFICE OF THE COMMISSIONER OF CUSTOMS (EXPORT)
INLAND CONTAINER DEPOT, TUGHLAKABAD, NEW DELHI-110020.

RECORD OF PERSONAL HEARING

Noticee :- Sh. Sandeep Sandha

File No.: VIII/ICD/TKD/6/Adj/Exp/Addl. Commr/26/2019

Date of PH: 25.09.2024 Time of PH: 13:30 Hrs.

Noticee Represented by: Sh. Richik Harikant, Advocate.

As requested, the RUDs & SCN have been provided. Sh. Richik have submitted that they will file detailed submissions within 5 weeks.

Regarding proof of delivery of SCN, concerned section is being asked to confirm.

Sh Richik has agreed to also mention in their submission, if they need any further hearing.

Richik.

25/9

Joint Commissioner of Customs
ICD, (Export), Tughlakabad, New Delhi

The Petitioner, however, chose not to file the written submissions or reply. Merely two letters were filed seeking permission to cross examine the witnesses.

11. The impugned order is an appealable order under Section 129 of the Customs Act, 1962 (hereinafter, '*the Act*') but the writ petition has been preferred by-passing the appellate remedy raising grounds as set out above.

12. The grounds which have been raised in the present writ petition can

always be raised before the Appellate Authority as per the Act.

13. Ld. Counsel for the Petitioner submits that the same would be a futile exercise because if the Petitioner succeeds, the matter would have to be again remanded back by the Appellate Authority.

14. As the said argument is conditional upon the Petitioner succeeding in the appeal, the Petitioner ought to avail of his remedies in accordance with law before the Appellate Authority.

15. Under such circumstances, the Court is of the opinion that this is not an extraordinary case for exercise of writ jurisdiction by this Court. It is, however, clarified that none of the questions of law raised have been gone into by the Court. All contentions are left open.

16. Accordingly, the petition is dismissed with the liberty to the Petitioner to approach the appropriate appellate forum to avail his remedies in accordance with law. The Petitioner is free to raise all grounds to assail the impugned order. All pending application(s), if any, are also disposed of.

17. Since the matter was pending before this Court, the Petitioner is granted further 30 days to approach the appellate forum.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 6, 2025
Gs/Am

CASE 22 OF 35

The Joint Commissioner, Central Tax and Central Excise, Kochi & Ors. v. Nishad K.U. (Prop. M/s Woodtunes Enterprises) & Anr.

Court	High Court of Kerala
Bench	A.K. Jayasankaran Nambiar and Easwaran S., JJ.
Date	17.02.2025
Case no. / citation	2025:KER:13589; W.A. No. 303 of 2025

Holding in brief

Natural justice applies in adjudication under the CGST Act. In appropriate cases the opportunity to cross-examine in proceedings under section 74(9) is part of natural justice, and its denial renders the proceedings void. Co-noticees cannot be cross-examined, but copies of their replies can be sought.

Paragraphs highlighted

Paras 23 to 25. Highlighted passages are on compendium pages 308-310.

Status

Final judgment; writ appeal dismissed.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 295.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946

WA NO. 303 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 17.12.2024 IN WP(C) NO.26732 OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 4:

1 THE JOINT COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE, CGST KOCHI,
COMMISSIONERATE, C.R. BUILDING, I.S. PRESS
ROAD, KOCHI, PIN - 682018

2 THE ADDITIONAL DIRECTOR,
DGGI, KOCHI ZONAL UNIT, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KALOOR P.O., KOCHI, PIN - 682017

3 THE ADDITIONAL COMMISSIONER
OF CENTRAL TAX AND CENTRAL EXCISE, C.R.
BUILDING, I.S. PRESS ROAD, COCHIN, PIN -
682017

4 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
REPRESENTED BY THE PRINCIPAL COMMISSIONER
(GST), GST POLICY WING, NORTH BLOCK, NEW
DELHI, PIN - 110001

BY ADV R.HARISHANKAR

RESPONDENTS/PETITIONER & 5TH RESPONDENT:

1 NISHAD K.U.,
AGED 42 YEARS
PROP. M/S. WOODTUNES ENTERPRISES, KUPPIYAN HOUSE, OKKAL P.O., CHELAMATTAM, PERUMBAVOOR, ERNAKULAM, KERALA, PIN - 683550

2 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF FINANCE(DEPARTMENT OF REVENUE), NORTH BLOCK, NEW DELHI, PIN - 110001

OTHER PRESENT:

ADV JAIKUMAR SEETHARAMAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

Easwaran S., J.

To what extent does the Central Goods and Services Tax Act, 2017 permit reading in the principles of natural justice? The intra-court appeal preferred by respondents 1 to 4 in the writ petition challenging the judgment dated 17.12.2024 in WP(C)No.26732/2024 raises this seminal question of law.

2. The brief facts necessary for the disposal of the appeal are as follows:

The 1st respondent was visited with proceedings under Section 74(9) of the Central Goods and Services Tax Act, 2017 (in short, 'CGST Act']. He was further visited with an order imposing a tax and penalty of more than Rs.9.40 Crores under the statutory provisions. Despite the availability of an alternate remedy, the 1st respondent herein approached the writ court alleging a serious infraction of the principles of natural justice, insofar as there was a failure to accede to his request for cross-examination of persons, whose statements were obtained during the enquiry and which were relied upon by the authority while passing the order of penalty.

3. The appellants contended before the learned Single Judge that under the scheme of the CGST Act, there is no mandate for

granting permission to cross-examine the witnesses whose statements were obtained by the proper officer in a proceedings for imposition of tax. However, the learned Single Judge, who considered the writ petition, took the view that the principles of natural justice had been violated since the authorities had denied the right to cross-examine the persons, who had given statements against the writ petitioner. While doing so, the learned Single Judge relied on the decision of the Hon'ble Supreme Court in **Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II [(2016) 15 SCC 785]**.

4. In the appeal before us, the appellants would contend that the learned Single Judge went wrong in placing reliance on the decision of the Supreme Court in **Andaman Timber Industries** (supra), especially since the decision referred to above did not take into consideration a binding Three Judge Bench decision of the Supreme Court in **Kanungo & Co. v. Collector of Customs, Calcutta and Others [1983 (13) ELT 1486 (SC)]** and in **Surjeet Singh Chhabra v. Union of India [1997 (89) ELT 646 (SC)]**. It is the specific case of the appellants that there is no requirement in law to grant an opportunity to cross-examine witnesses.

5. Heard Sri.R.Harishankar, the learned counsel appearing for the appellants, and Sri.S.Jaikumar, the learned counsel appearing

for the 1st respondent/writ petitioner.

6. Sri.R.Harishankar, the learned counsel appearing for the appellants, vehemently pointed out that there is no requirement to follow the principles of natural justice in an adjudication proceedings, especially when the Act does not contemplate such an opportunity. The writ petitioner cannot insist, as a matter of right, that he should be granted an opportunity to cross-examine the witnesses, whose statements were obtained by the proper officer. He reiterated that although the learned Single Judge placed reliance on the decision of the Supreme Court in **Andaman Timber Industries** (supra), the Supreme Court had rendered the said judgment without referring to the binding three Judge Bench decision in **Kanungo & Co** (supra).

7. On the other hand, Sri.S.Jaikumar, the learned counsel appearing for the 1st respondent/writ petitioner, would contend that even if there is no provision under the CGST Act that permits the cross-examination of persons, whose statements were relied on by the proper officer, the principles of natural justice have to be read into the said provision. Infraction of the said principle would vitiate the proceedings and, therefore, the writ petitioner was perfectly justified in approaching the writ court.

8. We have considered the rival submissions raised across

the bar.

9. The question of maintainability of the writ petition, despite the existence of an alternate remedy, is no longer *res integra*. The Supreme Court in **Commissioner of Income Tax & Ors v. Chhabil Dass Agarwal [2014 (1) SCC 603]**, formulated four exceptional cases wherein a writ court can entertain a writ petition, despite the availability of an alternate remedy. Paragraph 15 of the said decision is extracted as under:

> **"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case*,[22] *Titaghur Paper Mills case*[3] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained**

ignoring the statutory dispensation."

[22] Thansingh Nathmal v. Supt. Of Taxes, AIR 1964 SC 1419

[3] Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983) 2 SCC 433

10. In the present case, the writ petition was preferred alleging that while passing the impugned order, Ext.P8, the proper officer did not grant an opportunity to the petitioner to cross-examine the witnesses, whose statements were relied on by him. Therefore, we find that the writ petition was perfectly maintainable despite the existence of an alternative remedy.

11. The appellants, however, maintain that it is not the requirement of law to provide an opportunity to cross-examine the witnesses, whose statements were recorded by the proper officer under Section 74 of the CGST Act. We thus are called upon to judge whether it is a requirement of law that in proceedings under Section 74 of the CGST Act, the proper officer has to grant an opportunity of cross-examination to the assessee, if requested.

12. Section 74 of the CGST Act prescribes the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. Once the proper officer forms an opinion that a notice has to be issued to the assessee, he must serve a notice under sub-Section (3) of Section 74 of the CGST

Act containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised. Once the said notice is given, then, the proper officer is required under sub-Section (9) of Section 74 to consider the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order. There is no express provision for permitting a cross-examination of witnesses in the statute. It is therefore that the appellants contend that so long as the Act does not envisage such an opportunity, the proper officer is not required to extend such a benefit to the assessee. In support of the aforesaid contention, the learned Counsel placed extensive reliance on the decision of the Supreme Court in **Kanungo & Co. v. Collector of Customs, Calcutta and Others [1983 (13) ELT 1486 (SC)]**.

13. On a close reading of the aforesaid decision, we are of the considered view that the decision may not apply to the facts of the present case. A reading of the judgment shows that it was rendered in the context of provisions of the Sea Customs Act, 1878. When strong reliance is placed on the said decision, the appellants conveniently omitted to notice the fact that the Sea Customs Act, 1878 stood repealed on promulgation of Customs Act, 1962, where the provision governing procedure for adjudication is Section 122 which

provides for an opportunity for hearing and therefore does not exclude the principles of natural justice. Therefore, we are of the view that the decision rendered by the Supreme Court in **Kanungo & Co** has to be understood as one rendered in the facts of that case and cannot have universal application in view of the subsequent enactment. Moreover, the extent of the application of principles of natural justice has to be construed in the context of a procedure prescribed under a particular enactment.

14. Turning to facts, it can be seen that the proper officer recorded the statements of the persons who had deposed against the assessee and their statements were relied on by the proper officer in arriving at a tentative finding against the petitioner. Thus, the entire basis for the formation of an opinion of guilt against the petitioner was the statements of third parties recorded by the proper officer. If the writ petitioner was to prefer an effective representation against the proposals in the notice, he had to know the basis of the allegations against him and test the evidence used against him. It was therefore imperative for the proper officer to have granted the opportunity of cross-examination to the petitioner.

15. As regards the contention of the appellants that it is not the requirement of law to provide an opportunity to cross-examine the

witnesses since it is not an integral part of the principles of natural justice, we cannot but disagree with the stand of the appellants. It is now settled law that in every quasi-judicial proceedings, the rule of natural justice has to be followed. The rule of natural justice is the tenet of every adjudication proceedings, a violation of which renders the proceedings void. When courts are called upon to decide the validity of quasi-judicial proceedings on the ground of violation of principles of natural justice, it cannot shut its eyes and adopt a pedantic approach and hold that unless the said principle is specifically extended under plenary legislation or the rules framed under it, the insistence of the principles is not mandatory.

16. In **Krishnadatt Awasthy** v. **State of M.P. and Others [2025 SCC Online 179]**, a three Judge Bench of the Supreme Court considered the question as to whether in the absence of any rule which mandates grant of an opportunity of hearing or extending the principles of natural justice, a violation of the latter would render the entire proceedings void? On an extensive analysis, the Court held that a breach of the principles of natural justice strikes at the fundamental core of procedural fairness, rendering the decision invalid unless exceptional circumstances justify such deviation. The Court went on to hold further that the denial of natural justice at the initial stage can

not be cured at the appellate stage. On an extensive consideration of the various precedents, the Court also held that the principles of natural justice are the cornerstone of justice, ensuring that no person is condemned unheard.

17. In **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra [(2013) 4 SCC 465]**, the Supreme Court considered the question as to whether a request for cross-examination of the witnesses would form part of the principles of natural justice. The Court was considering the question in the context of verification of a caste certificate by the scrutiny committee constituted under the State law to go into the caste status of a particular employee. The Court held that non-extension of an opportunity to cross-examine the witnesses would vitiate the decision of the scrutiny committee, since the same was violative of the principles of natural justice.

18. A Division Bench of the Calcutta High Court in **Ajay Saraogi v. Union of India [2024 (136) GSTR 330]**, while considering the question as to whether the right of cross-examination is imbibed under the provisions of the Customs Act, 1962 held that the Customs Act, 1962 does not prohibit the application of the principles of natural justice.

19. In **Union of India & Another v. Tulsiram Patel [1985 (3)**

SCC 398] a Constitution Bench of the Supreme Court considered the scope of the principles of natural justice and held that a Rule framed under Article 309 cannot altogether exclude the principles of natural justice and if it does, then it is ultra vires.

20. We must note that the Supreme Court held as above despite the second proviso to Article 311(2) being deleted by the Constitution (Forty Second Amendment) Act, 1976. Thus, even if the plenary legislation or the subordinate legislation does not provide for the extension of the principles of natural justice, the same has to be read into the provisions.

21. In **Kothari Filaments and another Vs Commissioner of Customs (Port) Kolkata and others [(2009) 2 SCC 192],** the Supreme Court held that the provisions of the Customs Act, 1962 do not specifically exclude the principles of natural justice and the denial of opportunity to cross-examine the witnesses whose statements were relied on by the authorities while passing the order of confiscation, renders the proceedings invalid.

22. In **Aureliano Fernandes v. State of Goa and Others [(2024) 1 SCC 632]**, the Supreme Court held that extension of the principles of natural justice is not an empty incantation. It forms the very bedrock of Article 14 and any violation of these principles tantamounts

to violation of Article 14 of the Constitution. Paragraph Nos.35, 36, 37 and 38 are extracted hereunder:

> "*G. Article 14: Bedrock of the principles of natural justice*
>
> 35. Principles of natural justice that are reflected in Article 311, are not an empty incantation. They form the very bedrock of Article 14 and any violation of these principles tantamounts to a violation of Article 14 of the Constitution. Denial of the principles of natural justice to a public servant can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness and would result in depriving a public servant of equal protection of law.
>
> 36. Article 14, often described as the "Constitutional Guardian" of the principles of natural justice, expressly forbids the State, as defined in Article 12, from denying to any person, equality before the law or equal protection of the laws. Article 14 provides an express guarantee of equality before the law to all persons and extends a protection to them against discrimination by any law. Article 13(3)(a) defines "law" to include any ordinance, order, bye-law, rule, Regulation, notification, custom or usages having in the territory of India, the force of law. Thus, principles of natural justice guaranteed under Article 14, prohibit a decision-making adjudicatory authority from taking any arbitrary action, be it substantive or procedural in nature. These principles of natural justice, that are a natural law, have evolved over a period of time and been continuously refined through the

process of expansive judicial interpretation.

H. THE TWIN ANCHORS: NEMO JUDEX IN CAUSA SUA AND AUDI ALTERAM PARTEM

37. The twin anchors on which the principles of natural justice rest in the judicial process, whether quasi-judicial or administrative in nature, are Nemo Judex In Causa Sua, i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and Audi Alteram Partem, i.e. a person affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken.

38. How deeply have Courts internalised and incorporated the principles of natural justice into the Constitution can be perceived from the seven Judge Bench decision in Maneka Gandhi v. Union of India (1978) 1 SCC 248. In this case, where a challenge was laid to the order of impounding the passport of the Appellant, which was silent on the reasons for such an action and the Respondent-State had declined to furnish the reason therefor, it was held that life and liberty of a person cannot be restricted by any procedure that is established by law, but only by procedure that is just, fair and reasonable."

23. We must bear in mind that when judicial review of the order of a quasi-judicial authority is sought for, the court cannot turn a blind eye toward the civil consequences arising out of those orders impugned. Therefore, the assessee was fully justified in making a

request for cross-examination of the witnesses whose statement formed the basis of the impugned order and non extension of such an opportunity erodes the efficacy of the order and thus renders it nugatory.

24. Having said so, we must hasten to add that the right to cross-examine does not extend in respect of all witnesses. During the consideration of the appeal, we found that while issuing notices and passing final orders under Section 74 of the CGST Act, certain persons were arrayed as co-noticees. The plea of the writ petitioner to seek cross-examination of the co-noticees cannot be accepted as such. At best, the writ petitioner can only request the proper officer to serve copies of the replies submitted by the co-noticees to the notices received by them.

25. In conclusion, we find that the stand of the appellants that the principles of natural justice need not be followed during an adjudication under the provisions of the CGST Act is clearly untenable. In the light of the principles expounded by the Supreme Court in **Tulsiram Patel** (supra) and **Krishnadatt Awasthy** (supra), we hold that in appropriate cases, extending an opportunity of cross-examination in a proceedings under Section 74(9) of the CGST Act 2017 is an integral part of the principles of natural justice, a violation of which

will render the proceedings void.

Therefore, we decline to interfere with the judgment of the learned Single Judge setting aside the impugned order and for the reasons stated therein as supplemented by the reasons in this judgment, we dismiss this writ appeal. No costs.

Sd/-
DR.A.K.JAYASANKARAN NAMBIAR,
JUDGE

Sd/-
EASWARAN S.,
JUDGE

jg

CASE 23 OF 35

M/s Kashish Optics Ltd. v. The Commissioner, CGST Delhi West & Ors.

Court	High Court of Delhi
Bench	Yashwant Varma and Harish Vaidyanathan Shankar, JJ.
Date	03.03.2025
Case no. / citation	W.P.(C) 7741/2022

Holding in brief

Goods seized in October 2020 were held beyond the statutory time, and non-availability of documents could not be 'sufficient cause' for extending seizure. The goods were ordered released on deposit of the valuation, and the petitioner was permitted to take copies of seized documents and electronic data within four weeks.

Paragraphs highlighted

Paras 28 and 32 to 35. Highlighted passages are on compendium pages 329-330.

Status

Final order; petition disposed of with directions.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 312.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 29.01.2025***
Judgment pronounced on: 03.03.2025

\+ W.P.(C) 7741/2022, CM APPL. 23664/2022 (Interim Relief) & CM APPL. 25690/2022 (Addl. Docs.)

M/S KASHISH OPTICS LTD. ...Petitioner

Through: Mr. Puneet Agrawal, Mr. Ketan Jain, Ms. Sakshi Bisht, Ms. Shruti Garg and Mr. Chetan Kumar Shukla, Advs.

versus

THE COMMISSIONER, CGST DELHI WEST & ORS. ...Respondents

Through: Ms. Anushree Narain, SSC along with Mr. Ankit Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. By the present Writ Petition, the Petitioner herein lays challenge to the continued retention of goods by the Respondent, seized on the basis of a search conducted by the Respondents on 22/23 October 2020, pursuant to which a seizure order dated 23.10.2020 came to be issued.

2. The Petitioner seeks the following substantive reliefs:

i. Issue an appropriate writ or order or direction to the Respondents to release the goods seized vide the impugned seizure order dated 23.10.2020 **(Annexure P-5)** to the Petitioner; and/or
ii. Issue an appropriate writ or order or direction to the Respondents to release all the documents and electronic devices resumed as per Annexure-A to the panchnama dated 22/23.10.2020 **(Annexure P-3)** from the registered premises of the Petitioner; and/or
iii. Issue an appropriate writ or order or direction, to quash and set aside the impugned seizure order dated 23.10.2020 **(Annexure P-5);** and/or
iv. Issue any other writ, order or direction in favour of the Petitioner, as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case, so as to ensure the ends of justice, or else the Petitioner shall suffer irreparably; and/or
v. to grant costs of this Petition;

3. By a detailed order dated 07.01.2025, we had set out therein, the essence of the challenge raised in the present petition and the same reads as follows: -

> "1. The writ petitioner assails the continued seizure of articles pursuant to a panchnama which had come to be drawn on 22/23 October 2020 in connection with search proceedings initiated under the **Central Goods and Services Tax, 2017**. Pursuant to the search, an order of seizure came to be made by the respondents on 23 October 2020. This becomes evident from a perusal of Annexure P-5 and which forms a part of our record.
> 2. The petitioner was ultimately served with a notice stated to be dated 20 October 2021, calling upon it to show cause why the seized articles not be confiscated in terms contemplated under Section 130 of the Act. The challenge which stands mounted in the writ petition proceeds on the following lines.
> 3. Our attention is firstly drawn to Section 67(7) of the Act and which reads as follows: -
>
> "**67. Power of inspection, search and seizure**

***

> (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.
>
> PROVIDED that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months."

4. It is submitted that goods which are seized under the Act are liable to be returned to the person from whose possession they were taken within six months of seizure. It becomes pertinent to note that in terms of Section 67(2), the seizure of goods is itself predicated upon the formation of an opinion that the goods are liable to be confiscated. In terms of the Proviso to sub-section (7), the period of six months may, on sufficient cause being shown, be extended by the proper officer by a further period not exceeding six months. It is thus contended that the extension of the period during which the goods may remain seized cannot in any eventuality exceed a total period of 12 months. Our attention was also drawn to the provisions comprised in Section 130 of the Act and which relates to the subject of confiscation.

5. Pursuant to the directions issued on this writ petition, the respondents have also placed on our record relevant extracts of their note sheets and from which we gather that a note was prepared on 16 April 2021 proposing the extension of the period of seizure under Section 67(7) by a further period of six months upto 21 October 2021. It is during this period that the notice of confiscation referable to Section 130 came to be issued on 20 October 2021.

6. Learned counsel for the writ petitioner has drawn our attention to the *pari materia* provisions which stand comprised in Sections 110 and 124 of the **Customs Act,**

1962 and to two significant decisions which were handed down by the Supreme Court in connection therewith in **Assistant Collector of Customs v. Charan Das Malhotra**, which was followed by **I.J. Rao, Asst. Collector of Customs and Others. vs. Bibhuti Bhushan Bagh and Another.**

7. In *I.J. Rao*, one of the issues which came to be flagged by the Supreme Court was whether the person from whom the goods had been seized would be entitled to be heard before the original period as contemplated in the statute for seizure and retention of articles could be extended. Dealing with this aspect, the Supreme Court in *I.J Rao*, while placing reliance on its decision in *Charan Das Malhotra*, held: -

> "**9.** It is apparent that goods liable to confiscation may be seized by virtue of Section 110(1) but that those goods cannot be confiscated or penalty imposed without notice, opportunity to represent and to be heard to the owner of the goods or the person on whom penalty is proposed. This notice must be given within six months of the seizure of the goods, as envisaged by Section 110(2) of the Act, and if it is not, the goods must be returned to the person from whom the goods were seized. The proviso to Section 110(2) of the Act allows the period of six months to be extended by the Collector of Customs for a period not exceeding six months on sufficient cause being shown to him in that behalf.
>
> **10.** The Appellate Bench of the High Court is of opinion that the decision of the High Court in *Asst. Collector of Customs* v. *Charan Das Malhotra* lays down the correct law and applies to the facts of this case, that there is a duty on the part of the Collector of Customs to act judicially in exercising the power conferred under the proviso to Section 110(2) of the Act and that, therefore, notice should have gone to the owner of the goods before the extension

was ordered under the proviso. It has been held further that the order of extension should have been communicated to the owner and as that was not done the order was ineffective.

xxxx xxxx xxxx

12. In *Charan Das Malhotra* [(1971) 1 SCC 697 : 1971 SCC (Cri) 321 : (1971) 3 SCR 802] the court referred to the consideration that seizure was authorised under Section 110(1) on the mere "reasonable belief" of the officer concerned, that it was an extraordinary power and that therefore Parliament had envisaged a period of six months from the date of seizure for completing an enquiry on whether the goods should be confiscated and that if the enquiry was not completed within that period the goods must be returned. In some cases it is possible that the enquiry requires longer than six months, and accordingly power was conferred on the Collector, an officer superior in rank and also an Appellate Authority under Section 128, to extend the time subject to two conditions, that it did not exceed one year, and that sufficient cause must be shown for such extension. The court observed that the Collector was not expected to propose the extension mechanically or as a matter of routine but only on being satisfied that facts exist which indicate that the investigation could not be completed for bona fide reasons within the time provided in Section 110(2), and that therefore extension of the period has become necessary. The Collector, the court emphasized cannot extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension, in which case the burden of proof would clearly lie on the customs authorities applying for extension to show that such extension was necessary. Taking these

considerations into record the court held that the words "sufficient cause being shown" required an objective examination of the matter by the Collector. It was pointed out that ordinarily on the expiry of the period of six months from the date of seizure the owner of the goods would be entitled as of right to restoration of the seized goods, and that right could not be defeated without notice to him that an extension was proposed. The court rejected the contention that the continuing investigation would be jeopardised if such notice was given. The court held that the power under the proviso to Section 110(2) was quasi-judicial, at any rate one requiring a judicial approach, and consequently the person from whom the goods were seized was entitled to notice before the period of six months envisaged by Section 110(2) was extended. The point was considered again in *Lokenath Tolaram* v. *B.N. Rangwani* by a Bench of four Judges of this Court and the court referred to the view taken in *Charan Das Malhotra* but it declined to interfere because the appellants in that case had themselves waived notice concerning extension of the time. The court did not specifically give the stamp of approval to the law laid down in *Charan Das Malhotra*.

13. There is no doubt that the words "on sufficient cause being shown" in the proviso to Section 110(2) of the Act indicates that the Collector of Customs must apply his mind to the point whether a case for extending the period of six months is made out. What is envisaged is an objective consideration of the case and a decision to be rendered after considering the material placed before him to justify the request for extension. The Customs Officer concerned who seeks the extension must show good reason for seeking the

extension, and in this behalf he would probably want to establish that the investigation is not complete and it cannot yet be said whether a final order confiscating the goods should be made or not. As more time is required for investigation, he applies for extension of time. The Collector must be satisfied that the investigation is being pursued seriously and that there is need for more time for taking it to its conclusion. The question is whether the person claiming restoration of goods is entitled to notice before time is extended. The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond to the basic reason which gives to the proceeding its character, and that reason is that a right of a person may be affected and there may be prejudice to that right if he is not accorded an opportunity to put forward his case in the proceeding. In other words, the issue is whether there is a right in a person from whose possession goods are seized and which right may be prejudiced or placed in jeopardy unless he is heard in the matter. It cannot be disputed that Section 110 sub-section (2) contemplates either notice (within six months from the date of seizure) to the person from whose possession the goods have been seized in order to determine whether the goods should be confiscated or the restoration of the goods to such person on the expiry of that period. If the notice is not issued in the confiscation proceedings within six months from the date of seizure the person from whose possession the goods have been seized becomes immediately entitled to the return of the goods. It is that right to the immediate restoration of the goods upon the expiry of six months from the date of seizure that is

defeated by the extension of time under the proviso to Section 110(2). When we speak of the right of the person being prejudiced or placed in jeopardy we necessarily envisage some damage or injury or hardship to that right and it becomes necessary to inquire into the nature of such damage or injury or hardship for any case to be set up by such person must indicate the damage or injury or hardship apprehended by such person. In the present case, one possibility is that the person from whose possession the goods have been seized may want to establish the need for immediate possession, having regard to the nature of the goods and the critical conditions then prevailing in the market or that the goods are such as are required urgently to meet an emergency in relation to a vocational or private need, and that any delay in restoration would cause material damage or injury or hardship either by reason of some circumstance special to the person or of market conditions or of any particular quality of requirement for the preservation of the goods. But it will not be open to him to question whether the stage of the investigation, and the need for further investigation, call for an extension of time. It is impossible to conceive that a person from whose possession the goods have been seized with a view to confiscation should be entitled to know and to monitor, how the investigation against him is proceeding, the material collected against him at that stage, and what is the utility of pursuing the investigation further. These are matters of a confidential nature, knowledge of which such person is entitled to only upon the investigation being completed and a decision being taken to issue notice to show cause why the goods should not be confiscated. There can

be no right in any person to be informed midway, during an investigation, of the material collected in the case against him. Consequently, while notice may be necessary to such person to show why time should not be extended he is not entitled to information as to the investigation which is in process. In such circumstances, the right of a person, from whose possession the goods have been seized, to notice of the proposed extension must be conceded, but the opportunity open to him on such notice cannot extend to information concerning the nature and course of the investigation. In that sense, the opportunity which the law can contemplate upon notice to him of the application for extension must be limited by the pragmatic necessities of the case. If these considerations are kept in mind, we have no doubt that notice must issue to the person from whose possession the goods have been seized of the proposal to extend the period of six months. In the normal course, notice must go to such person before the expiry of the original period of six months. It is true that the further period of six months contemplated as the maximum period of extension is a short period but Parliament has contemplated an original period of six months only and when it has fixed upon such period it must be assumed to have taken into consideration that the further detention of the goods can produce damage or injury or hardship to the person from whose possession the goods are seized.

xxxx xxxx xxxx

16. In our opinion, the person from whose possession the goods have been seized is entitled to notice of the proposal before the Collector of Customs for the extension of the original period of six months mentioned in

> Section 110(2) of the Customs Act, and he is entitled to be heard upon such proposal but subject to the restrictions referred to earlier in regard to the need for maintaining confidentiality of the investigation proceedings."

8. It was thus contended that the absence of any notice or opportunity having been provided to the writ petitioner prior to the extension being approved on 16 April 2021, would itself constitute sufficient ground to invalidate the seizure of articles.

9. It was further contended that even the note sheet which is relied upon by the respondents does not refer to any germane material which may have been considered sufficient warranting extension of the period of seizure by a further period of six months. It was also the submission of learned counsel that in fact the seizure notice itself has come to be served after the maximum period of 12 months as is contemplated under Section 67(7) and that the same was communicated to the writ petitioner for the first time under cover of a letter dated 24 March 2022.

10. It is submitted that according to the respondents, the purported notice of confiscation dated 20 October 2021 is stated to have been served upon the writ petitioners by way of affixation. It was in this backdrop that learned counsel invited our attention to the provisions comprised in Section 169 of the Act and submitted that affixation is a mode which can be resorted to only if the other modes of service as contemplated in clauses (a) to (e) of that provision were not possible. Viewed in that light, the petitioner would contend that the confiscation notice would be deemed to have been made only in 2022 and thus clearly beyond the maximum period of 12 months as contemplated under Section 67(7).

11. In order to enable Ms. Narain, learned counsel representing the respondents to address submissions in the aforesaid light, let the writ petition be called again on 20.01.2025."

4. On 29.01.2025, Ms. Narain, learned Senior Standing Counsel

appearing for the Respondents, while replying to the queries raised by this Court and responding to the contentions of the Petitioner, had sought to defend the actions of the Department by submitting that the provisions of Section 110 of the Customs Act, 1962 (hereinafter referred to as "**the Customs Act**") are different from the provisions of Section 67 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "**the CGST Act**") and that, the said two provisions are operating in different fields and in that sense, cannot be held to be *pari materia*.

5. Ms. Narain would further state that the file noting would clearly evidence that there was a "sufficient cause" shown in the said noting which supported the order of seizure as well as the continuation of the same for a further period of six months.

6. It is also the submission of Ms. Narain that the Show Cause Notice (hereinafter referred to as "**SCN**") dated 20.10.2021 issued in terms of Section 67(7), is not barred by time. She reasons that the said notice was served on the very same day that it was issued and that in terms of Section 169 of the CGST Act, since none was available at the registered office premises and after the numerous calls to the Proprietor, Mr. Saket Agarwal, went unanswered, the complete SCN was pasted on the front side of the locked premises and panchnama dated 20.10.2021 was drawn.

ANALYSIS:

7. Section 67 of the CGST Act 2017, as relevant for the present purposes, reads as follows: -

> **"67. Power of inspection, search and seizure:**

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

…..

> (6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.
>
> (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.
>
> Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.
> ….."

8. Section 110(2) of the Customs Act as it stood at the relevant time is as follows:

> "**110. Seizure of goods, documents and things. —**
> ***
>
> (2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:
>
> Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months."

9. A perusal of the two provisions makes it evident that the two are similarly worded.

10. We are of the belief that the two provisions are *Pari Materia* and the contention of the Respondents that the same cannot be *pari materia* is clearly incorrect.

11. We advert to the first justification sought to be given by Ms. Narain in support of the impugned SCN, *namely*, that the judgment of

the Hon'ble Supreme Court in the matter of **I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another**[1] would not apply in the present case as the same is under the Customs Act, 1962 whereas, the present matter deals with the CGST Act, 2017. She would also contend that the scheme of Section 67 of the CGST Act is materially different from the scheme of Section 110 of the Customs Act as it stood then, and the application of the said judgment, in the present facts and circumstances, would constitute the reading of the said provisions of the Customs Act into the CGST Act. She would thus conclude that the said provisions are not *pari materia*.

12. We do not agree with the contention of Ms. Narain that the provisions of Section 110 of the Customs Act, referred to in the Judgment of *I.J. Rao*, are not *pari materia* with Section 67 of the CGST Act.

13. Both the Acts are fiscal Acts. Seizure of goods and documents is provided for in both the acts. Such seizure is only on the basis of a "reasonable belief". Seizure of goods would have serious repercussions on the person whose goods are so seized. Seizure is for the limited purpose of securing the interest of the concerned authorities to conduct their proceedings.

14. In *I.J Rao*, the Hon'ble Supreme Court has held that upon the expiry of six months, the person whose goods are seized becomes entitled to their return and the said right cannot be sought to be defeated unilaterally and the affected person would be entitled to a notice of the proposal for extension prior to the expiry of six months

[1] I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another, (1989) 3 SCC 202

and is also entitled to be heard on the said proposal, albeit with certain restrictions keeping in mind the statutory entitlement and the larger public concerns.

15. Even assuming the two provisions were not "*pari materia*", the underlying logic and reasoning would clearly apply to the provisions of the CGST Act and the case in hand.

16. The further contention that under Section 67(7) of the CGST Act, no notice of personal hearing is required to be given as the wording of Section 67(7) of the CGST Act is unambiguous in this respect, does not seem to be borne out from the express provisions. In fact, the Section is couched in a manner such as to ensure that the "sufficient cause will have to be shown" to the affected person. "Sufficient cause" cannot mean a reason known only to the concerned officials for extending the period of seizure to the detriment of the affected person, thereby denying him his entitlement to the goods.

17. The Respondents also argue that the judgment in *I.J. Rao* will not apply because of Rule 140 of the CGST Rules, 2017 (hereinafter referred to as "**the Rules**") which, when read with Section 67(7) of the CGST Act, provides for the provisional release of seized goods and that the Petitioner having failed to make an application in this regard, cannot challenge the non-issue of a notice for extending the period of seizure.

18. The fact that Rule 140 of the Rules provides for release on a provisional basis of seized goods does not obliterate the proviso to Section 67(7) of the CGST Act, including the need for showing "sufficient cause" for extending the period of retaining the seized

goods.

19. The argument of the Respondents that the Petitioners have not shown how the retention of the goods would be prejudicial or that they would be diminishing in value, is also incorrect as the Petitioner has clearly stated on various occasions that the said frames of spectacles would go out of fashion and resultantly, they would suffer huge losses. On that count too, Ms. Narain's attempt to distinguish the judgment of *I.J. Rao* from the facts and circumstances of the present case, would fail.

NOTE-SHEET PROVIDES "SUFFICIENT CAUSE" FOR CONTINUED SEIZURE:

20. In the facts of the present case, no notice of extension of the seizure was provided prior to the conclusion of the six-month period. Reliance was instead placed on certain extracts which came to be filed as a consequence of our Order dated 22.08.2023 to contend that the same would constitute compliance of the mandate of "sufficient cause".

21. These extracts are not in the public domain and the Petitioner herein could not have had any opportunity to controvert or reply to the contents of the same. It clearly amounts to a unilateral act on the part of the Respondent by which the Petitioner would stand deprived of its statutory entitlement to the goods and for that reason alone would not satisfy the mandate of Section 67(7) of the CGST Act.

22. The contents of the note-sheet would show that Mr. Saket Aggarwal had co-operated and participated fully in the investigation. What it also shows is that the concerned officer has not recorded the

description of the goods properly and that is not a fault that can be attributable to the Petitioner.

23. What is most pertinent is that the said note sheet prepared by the Inspector and the Superintendent clearly records that:

> "The investigation case files in respect of M/s Kashish Optics (P) Ltd. And its relevant documents have not been properly handed over by Sh. Amit Khatri, Insp. till date i.e. 13.4.2021. On going through the case file, it is found that following relevant documents are not placed opposite in this file, details are as under:-..."

and goes on to record that even the panchnama was not in the file. The said Mr. Saket Agarwal has, in fact, given a complete description of the goods and it is the seizure form that was prepared by the concerned officials which does not record the details.

24. This aspect has also been noticed by the concerned senior official to whom the same was put up along with the Draft SCN and adversely commented upon.

25. The said officer also notes, *inter alia*, that:

> "However scrutiny of the file failed to show any basis of such valuation. Further description of relied upon BPE placed in file is Metal Spectacle Frames (unbranded). However, in Panchnama, they are shown Sunglass frame of various brands/varieties. Thus, their basis appears to be irrelevant and is not the correct basis of valuation of the goods seized."

26. The said officer however gives further reasoning related to COVID-19 which is not found in the note sheet that accompanies the Draft SCN.

27. Clearly, the shoddy performance by the concerned officers in valuing the goods despite the complete cooperation of the Assessee

cannot be "sufficient cause".

28. In any event, when the relevant documents themselves were not made available completely, it is difficult to accept the contention that the same could have formed "sufficient cause" for the purpose of extending the period of seizure.

SCN DATED 20.10.2021 IS NOT BARRED BY LIMITATION:

29. Ms. Narain would further submit that the SCN dated 20.10.2021 is not time-barred in terms of Section 67(7) of the CGST Act, as the said notice was served on the very same day that it was issued. She would further state that no one was present at the registered premises and the Department's calls made to the proprietor of the Petitioner were not answered, resulting in the Department pasting the impugned SCN on the front of locked premises.

30. We do not propose to examine the factual aspect of the contentions as the said SCN is not even impugned herein.

31. In any event, the said SCN relates to the confiscation and not to the extension of seizure. The argument is, thus, not relevant for the present purposes.

32. Nevertheless, confiscation is the result of an investigation that establishes that there has been a contravention of the provisions of the Act. The same cannot be equated to the power of seizure under Section 67 which pertains to the power of the Officer to seize based on a "reason to believe". A notice under Section 130 cannot be equated to the mandate under Section 67(7).

33. For the aforementioned reasons, we allow the Writ Petition and direct that the seized goods as per the stock summary annexed to the

letter dated 17.06.2021 (**Annexure P-6**) be released upon the Petitioner making a deposit of the amount as per the valuation annexed to the letter dated 17.06.2021, with the Respondents.

34. Proceedings, if any, in respect of the alleged violation shall be concluded by the Respondents within a period of six weeks.

35. The Petitioner is also permitted to take photocopies of all documents seized by the Respondents who are also directed to provide copies of all data that may be in electronic form within a period of four weeks from today. The Respondents may make copies of data in the seized electronic devices (Laptop, Mobile Phone, Storage devices, etc.) and release the devices to the Petitioner.

36. In the above terms, the present petition is disposed of along with the pending application(s).

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 03, 2025/nd/sm

CASE 24 OF 35

Rakesh Kumar Gupta v. Directorate of Revenue Intelligence

Court	High Court of Delhi
Bench	Prathiba M. Singh and Rajneesh Kumar Gupta, JJ.
Date	20.03.2025
Case no. / citation	W.P.(C) 11518/2024 (with W.P.(C) 11607/2024)

Holding in brief

Devices seized in a customs investigation need not be retained throughout the proceedings: the data may be cloned and verified in the petitioner's presence, the devices returned, and any downloaded documents relied on listed as RUDs with copies supplied. The Registry was to send the order to CBIC for a Standard Operating Procedure.

Paragraphs highlighted

Paras 12 to 16. Highlighted passages are on compendium pages 335-336.

Status

Final order; petitions disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 332.

$~9 & 10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th March, 2025

\+ **W.P.(C) 11518/2024**

RAKESH KUMAR GUPTA .....Petitioner

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Maninder Kaur & Mr. Ayush Mittal, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE .....Respondent

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Vikas Kumar & Mr. Subham Kumar, Advocates.

10

\+ **W.P.(C) 11607/2024**

VIBHUTI BHUSHAN DAS .....Petitioner

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Maninder Kaur & Mr. Ayush Mittal, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE .....Respondent

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Vikas Kumar & Mr. Subham Kumar, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petitions have been filed by the Petitioners - Rakesh Kumar Gupta and Vibhuti Bhushan Das under Article 226 and 227 of the Constitution of India seeking issuance of an appropriate writ directing the Respondent to

release the electronic devices of the Petitioners.

3. The Respondent-Directorateof Revenue Intelligence (hereinafter '*DRI*') received intelligence in respect of smuggling of substantial quantity of foreign origin gold in a completely concealed manner through triangular valves.

4. Upon intelligence being received, in May 2022, the DRI took action and seized the goods. The freight forwarding was handled by M/s ECG Easy Connect Logistics Pvt. Ltd of which the Petitioners are the Directors.

5. The statement of Mr. Rakesh Kumar Gupta was recorded under Section 108 of the Customs Act, 1962. Various devices are stated to have been seized from the Petitioner, details of which are as under:

> i) One Mobile Phone-Realme EMX1921, IMEI No.86267204774114 and IMEI862672047741106 [Mobile No. 9871880949]
> ii) One Mobile Phone-Samsung Galaxy A50S, IMEI No. 351595119911042/01 and 351596119911040/01 [Mobile No. 9999571058]

6. Further, while in the course of recording of the statement of Mr. Vibhuti Bhushan Das under Section 108 of the Customs Act, 1962, one mobile phone of the said Petitioner has been seized. The said device is described as under :

> i) One Mobile Phone- HUAWEI make, Model No. FLA-AL20, MEI No. 869495033588064 & 869495033649403 [Mobile No. 9910058338]

7. The case of the Petitioners is that since now the investigation has been concluded and show cause notices have been issued, the devices

ought to be released to the Petitioners. Hence, the prayer is for release of the electronic devices.

8. On behalf of the Petitioners, Mr. Maggu, ld. Counsel submits that the devices were submitted at the time of the recording of statements and the Petitioners have no objection if the data on the devices is fully copied by the Department.

9. On behalf of the Respondent, Mr. Ojha, ld. Counsel submits that the devices have been cloned, however, in view of objections which could be raised in respect of mode of proof and admissibility at the time when adjudication takes place, the devices have been retained. It is also submitted by Mr. Ojha, ld. Counsel that the Department is in the process of filing prosecutioncomplaints against the Petitioners.

10. The mode and manner of proving electronic data is well-established both under statutes as also in several judgments. Some guidance also exists in the Delhi High Court(OriginalSide) Rules, 2018which stipulates that electronic documents can be filed as under:

> *"**24. Reception of electronic evidence** - A party seeking to tender any electronic record shall do so in a CD/ DVD/ Medium, encrypted with a hash value, the details of which shall be disclosed in a separate memorandum, signed by the party in the form of an affidavit. This will be tendered along with the encrypted CD/ DVD/ Medium in the Registry..."*

11. For the said purpose the Respondent may make a proper copy of the data from the mobile phones on a CD/Pen Drive and a hash value may be added to preserve the integrity of the data. The said data can then be furnished at the appropriate stage to the concerned Court or in the show

cause proceedings, in accordance with law.

12. In order to obviate any objections on behalf of the Petitioners in respect of the data which is copied, the Petitioners may appear before the Respondent and the data may be verified when the same is copied, if they so choose to do. Thereafter, the electronic devices may be returned to the Petitioners.

13. Mr. Maggu, ld. Counsel on behalf of the Petitioner submits that the data after being verified and copied by the Department, the Petitioners would not raise any objections for production of the original devices or for the manner of proof of the electronic data. This process shall be undertaken within next four weeks.

14. If any particular document, which is downloaded from the devices of the Petitioners is also relied upon by the Respondent either in the show cause notice proceedings or in the prosecution complaint, the said Relied Upon Documents (hereinafter, '*RUDs*') shall be listed and copies shall be provided to the Petitioners. In light of the above, the Petitioner would not raise any objections as to non-fulfilment of any requirement under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 and Section 138C of the Customs Act, 1962.

15. This process could be adopted by the Commissioner of Customs in all the Commissionerates, so that persons from whom devices are seized can be returned the same, after the data is copied. The retention of the devices throughout the Show Cause Notice (hereinafter, '*SCN*') proceedings and the prosecutions, unless essential, could then be avoided, as the devices themselves may become completely out-dated and retrieval of data from the same after a few years also becomes difficult. The proper

copying of the data and retention of the same on Servers in the Customs Department would also make it accessible to the investigation officers as also other personnel.

16. Registry is directed to communicate this order to the OSD (Legal) Central Board of Indirect Taxes and Customs (hereinafter, '*CBIC*')through email (Osd-legal@gov.in)in order to enable preparation of a Standard Operating Procedure for data retrieval from electronic devices and preservation of the same. Let Mr. Anurag Ojha, ld. Counsel, also communicate this order to OSD (Legal), CBIC for necessary information and compliance

17. Both the petitions are disposed of. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 20, 2025/*da/ck*

CASE 25 OF 35

Sazid Ali Khan v. Principal Commissioner, Central GST and Central Excise, Vadodara-I & Ors.

Court	High Court of Gujarat
Bench	Bhargav D. Karia and Pranav Trivedi, JJ.
Date	20.06.2025
Case no. / citation	2025:GUJHC:37617-DB; Special Civil Application No. 6437 of 2025

Holding in brief

Writ against a section 74 notice and order, with a plea of no hearing and refusal of cross-examination. The Court relied on authority that cross-examination can be refused where the documents were disclosed and the party could rebut, held that the appeal under section 107 is a continuation of the original proceedings, and gave liberty to appeal.

Paragraphs highlighted

Paras 8 (Telstar Travels extract), 9 and 10. Highlighted passages are on compendium pages 369-371.

Status

Final order; petition dismissed with liberty to appeal.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 338.

NEUTRAL CITATION
2025:GUJHC:37617-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6437 of 2025

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SAZID ALI KHAN
Versus
OFFICE OF PRINCIPAL COMMISSIONER, CENTRAL GST AND CENTRAL EXCISE COMMISSIONERATE, VADODARA-I & ORS.

==========

Appearance:
MR PAVAN S GODIAWALA(2936) for the Petitioner(s) No. 1
MR ABHISHEK D. JAIN, AGP for the Respondent(s) No. 3
MR NEEL P LAKHANI(10679) for the Respondent(s) No. 1,2
MR PRADIP D BHATE(1523) for the Respondent(s) No. 4

==========

CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 20/06/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr.Pavan S. Godiawala for the petitioner, learned advocate Mr.Neel P. Lakhani for the respondent Nos.1 and 2 through video conference and learned Assistant Government Pleader Mr.Abhishek D. Jain for the respondent No.3.

2. By this petition under Article 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the

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Order-in-Original dated 24th January, 2025 passed by the respondent No.2-Joint Commissioner, Central GST, Vadodara-I.

3. The brief facts of the case are as under :

3.1. The petitioner is a proprietor of M/s.KSEG India International and doing scrap business since two decades.

3.2. The petitioner was registered under the provisions of Central Sales Tax Act and the Value Added Tax Act and after coming into force of the Goods and Services Tax Act, the petitioner was registered under the provisions of the Central/State Goods and Services Tax Act, 2017 (for short 'the GST Act').

3.3. It is the case of the petitioner that the petitioner filed regular returns as

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required under the provisions of the GST Act.

3.4. An information was received by the letter dated 04.10.2018 from the Joint Commissioner (Preventive), CGST, Ahmedabad South by the respondents to the effect that M/s.S.K.Enterprise, Ahmedabad is indulging in generating invoices and passing on GST credit to other Companies without any actual movement of goods and has passed on the GST credit to the M/s.KSEG India International, Vadodara.

3.5. On the basis of such information, a search operation was conducted at the premises of the petitioner on 11.01.2019 and relevant documents i.e. purchase invoices of M/s.S.K.Enterprise, Ledger Account etc. were seized under the Panchnama. Thereafter, further investigation was carried out against

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M/s.H.M.Industries Private Limited, Kapadwanj on the same issue i.e. availment of credit on strength of input invoices without receipt of the goods from three bogus firms of Ahmedabad i.e. M/s.Shivay Enterprise, M/s.Avi Enterprise and M/s.Parshwnath Engineering. During the course of the search at the premises of M/s.KSEG, it was found that the petitioner also availed the credit on the strength of invoices issues by the said three firms.

3.6. After the investigation was carried out, the statement of the petitioner was recorded on 26th March, 2019 wherein, in answer to question No.11, the petitioner refused to peruse the printout of the vehicles verification report downloaded from the website https://vahan.nic.in by stating that such reports were not concerning him but

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agreed with the 'Remarks Column' shown against 27 vehicles out of 119 vehicles as mentioned in the table and also accepted that heavy cargo like scraps cannot be transported in three wheeler tempo/three wheeler passenger vehicles, scooters, motorcycles, bus and tractor trailer etc.

3.7. The petitioner was also arrested on 30th March, 2019 by the respondent-Authorities and was released on bail after deposit of Rs.35 Lakhs as personal bail and after agreeing for some other conditions of the bail order.

3.8. It appears that the summons dated 14.08.2019 was also issued upon the petitioner to submit relevant documents i.e. Invoices of Suppliers, Lorry Receipts, Public Consignments

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Notes and E-way Bills etc. for the period from July, 2017 to March, 2018 and 2018-19 in case of four firms as well as M/s.Aadarsh Trading and M/s.Vikas Trading. In response to such summons, the petitioner by letter dated 21.08.2019 submitted that the so called documents pertaining to the said period were not in his possession and the same were lost by the person from his Office namely Mr.Keshavkumar Sharma during the transit from Nehru Nagar, Ghaziabad to Hapudmod Bus-Station at Delhi and the same was reported to Sihani Gate Police Station, Delhi. Accordingly, the summons dated 16.09.2019 was issued to Mr.Keshavkumar Sharma to give statement but he did not produce himself before the respondent.

3.9. In the further statement of the petitioner recorded on 7th February, 2022, it

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was stated that Mr.Keshavkumar Sharma has left his Company and all the documents for the years 2017-18 and 2018-19 except seized by the Department on 11.01.2019 had been lost in Ghaziabad by the said person.

3.10. The respondent No.2 thereafter extended the investigation towards verification of various vehicles used in the transactions between the petitioner firm and various other firms who were alleged to have provided the Invoices without supply of the goods and it was found during the investigation that no E-Way Bill during the period from May, 2018 to March, 2021 was available for the supply of the goods to M/s.KSEG by four firms i.e. M/s. M&M.Enterprise, M/s.Riteshkumar Arvindbhai Parekh, M/s.Fairwell Sales Private Limited and

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M/s.Ajay Enterprise. During the investigation, it was further revealed that the fake/dubious ITC were passed on by M/s.KSEG in respect of fifteen firms and accordingly, a search was again conducted on 08.07.2021 at the premises of the petitioner at Vadodara by the Officers of the Preventive Section of the CGST&CE, Vadodara-I and purchase ledger of the fifteen units were seized. Thereafter, on further investigation, it was revealed that in case of one M/s.Laxmi Traders that it was a fictitious firm and has passed on ITC to the tune of Rs.24,82,956/- to M/s.KSEG-Proprietorship concern of the petitioner. Investigation was carried out in almost more than 24 firms and thereafter, the final statement of the petitioner was recorded again on 6th March, 2023 wherein, it was stated that he has availed Input Tax Credit on value mentioned in

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GSTR-2A and did not place any written order for purchase of scrap and there is no outstanding payment in case of M/s.Fairwell Sales Private Limited and M/s.Shivay Tradelink and rest of the parties.

3.11. The respondent thereafter issued the intimation in Form GST-DRC-01A under Rule 142(1A) of the Central Goods and Services Tax Rules, 2017 (for short 'the Rules') on 17th March, 2023 but no reply of the same was received till the issuance of the show-cause notice on 31st March, 2023 upon the petitioner calling upon the petitioner to show-cause as to why:

> *(i) An amount of Rs.14,52,31,254/- (Fourteen Crores Fifty Two Lakhs Thirty One Thousands Two Hundred Fifty Four only) (IGST-Rs. 3,15,59,115/-, CGST-Rs. 5,68,36,070/-, SGST-Rs.*

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5,68,36,070/-) availed as input tax credit fraudulently by them during from 24 suppliers as mentioned in Table -6 above during the period July-2017 to March 2022 should not be demanded under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the GGST Act, 1994 and section 20 of IGST Act 2017;

(ii) Interest on wrongly availed fraudulent credit should not be demanded from them on the amount demanded above under Section 50 of the CGST Act, 2017 read with Section 50 of the GGST Act, 2017 and section 20 of IGST Act 2017;

(iii) Penalty in terms of Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the GGST Act, 2017 and section 20 of IGST Act 2017 should not be imposed on them which is equal to amount demanded at SI. No (i)above;

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3.12. The show-cause notice was also issued to Mr.Vijay Jani on 31.03.2023 and Mr. Keshavkumar Sharma, Accountant of the petitioner.

3.13. It appears that the petitioner meanwhile, has preferred Special Civil Application No.18159 of 2019 before this Court with the following prayers :

> *"4. In the light of the aforesaid facts and circumstances, the petitioner herein prays :*
>
> *A. The Hon'ble Court would be pleased to issue writ of certiorari or such other appropriate writ quashing and setting aside the impugned order, summons at Annexure "I" and impugned summons and ongoing actions of the Respondents and issue writ of mandamus or such other appropriate writ directing the Respondents to refund the bond*

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amount;

B. The Hon'ble Court would be pleased to stay the impugned actions of the Respondents from further inquiry and actions of further issuance of the summons against the Petitioner, pending hearing and final disposal of the petition;

BB. The Hon'ble Court would be pleased to waive/modify/amend the conditions vide letter dated 15.10.2019 as imposed by the Deputy Commissioner, pending hearing and final disposal of the petition, in the overall interest of justice."

3.14. This Court by order dated 06.05.2024 passed the following order :

"Heard learned advocate Mr.Pavan S. Godiawala for the petitioner/applicant and learned advocate Mr.Utkarsh Sharma for the respondent No.4.

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Order in Civil Application *:*

This application is filed for the amendment of the Special Civil Application by placing on record the show-cause notice dated 31st March, 2023 as well as relevant submissions and prayer to quash the notice. The same is allowed in terms of paragraph No.3A.

The application is accordingly disposed of.

Order in Special Civil Application *:*

1. Learned Mr.Pavan S. Godiawala for the petitioner has tendered the draft amendment. The same is allowed in terms of the draft. To be carried out forthwith.

2. Issue ***Notice*** *upon newly added respondent No.2-A, returnable forthwith. Learned advocate Mr.Utkarsh Sharma waives service of notice for and on behalf of the newly added respondent*

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No.2-A.

3.1. Learned advocate Mr.Pavan S. Godiawala submitted that the main grievance of the petitioner is that the the petitioner was harassed by the respondent-authority by calling him every Monday and asking him to sit from morning to evening without any further inquiry. It was further submitted that the entire inquiry and the show-cause notice issued by the respondent-authority is without any basis and jurisdiction and therefore, liable to be quashed and set aside. It was further submitted that the petitioner has not availed any benefit of Input Tax Credit as alleged in the impugned show-cause notice.

3.2. It was submitted that though the petitioner has tendered the reply under protest, the respondent-authorities have not proceeded further or passed any order after issuance of show-cause notice.

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3.3. It was further submitted that the show-cause notice is issued without conducting any inquiry and after conducting proper inquiry the show-cause notice can be issued and therefore, the impugned show-cause notice is liable to be quashed and set aside.

4. On the other hand, learned advocate Mr.Utkarsh Sharma for the respondent-authorities submitted that this petition is filed on the basis of apprehension and only on the basis that the petitioner was harassed by the respondent-authorities. It was further submitted that the petitioner was never harassed and shall not be harassed at any point of time as the respondent-authorities are discharging their duties and if the petitioner is feeling that he is harassed, then the petitioner should co-operate with the respondent-authorities in putting an end to the entire adjudication process pursuant to the show-cause notice. It was therefore

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submitted that no interference be made in the impugned show-cause notice and the respondent-authorities undertakes to complete the entire adjudication process within three months from today with the co-operation of the petitioner.

5. Considering the above submissions and considering the manner in which the present petition is filed making grievance against the conduct of the respondent Officers in conducting the inquiry as well as issuing the impugned show-cause notice, without entering into merits of the matter and in view of the fact that the matter is pending since 2019 and the impugned show-cause notice is issued before one year on 31.03.2023, the petition is disposed of with the following directions.

(i) The petitioner shall co-operate in adjudication process of the show-cause notice,

(ii) The respondent-authorities

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shall not cause any harassment to the petitioner and after giving opportunity of hearing to the petitioner including the opportunity to cross-examine, if the petitioner requests for cross-examination of any of the person who is referred to in the relied upon the documents, shall pass the order in Form GST DRC-07 disposing of the show-cause notice issued under Section 74 read with Section 70 and in accordance with the provisions of Section 75(4) of the Central Goods and Services Tax Act, 2017.

(iii) Such exercise shall be completed within a period of twelve weeks from the date of receipt of the copy of this order.

6. The petition is accordingly disposed of without expressing any opinion on merits, keeping all the contentions open to be raised by the petitioner during the adjudication process by the

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respondent-authorities. Notice is discharged."

3.15. Pursuant to the aforesaid order passed by this Court, the petitioner submitted an application on 04.10.2024 to cross-examine the following persons :

"1.Mr.C.B.Mayavanshi, Superintendent(Prev), CGST, Vadadora;
2.Mr.R.K Ojha, Superintendent (Prev), CGST, Vadadora;
3.Mr.Rajeev Kumar Agarwal Superintendent (Prev), CGST, Vadadora;
4.Mr.C A Chavda, Superintendent (Prev), CGST, Ahmedabad;
5.Mr.Vijay Vajubhai Jani-Commission Agent-Bhavnagar statement Recorded by Supt Mr.C.B.Mayavanshi."

3.16. The respondent-Authority thereafter fixed the hearing on 14.10.2024. The petitioner submitted a reply on 14.10.2024 with a request to cross-examine the above

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witnesses by issuing summons and requested for adjourning the matter to 21st or 22nd of October, 2024.

3.17. However, when the respondent-Authority has granted the opportunity to the petitioner on 26.12.2024, due to unavoidable circumstances as the Advocate of the petitioner was not in position to attend the hearing and thereafter the case was adjourned too, however, by letter dated 15.01.2025 also the adjournment was sought on account of indisposed health of the Advocate of the petitioner, but no one attended the hearing thereafter and the respondent-Authority has passed the impugned Order-in-Original on 24th January, 2025.

3.18. It also appears that the respondent No.2 issued the personal hearing letters dated

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27.09.2024, 02.12.2024 and 31.12.2024 as well as summons dated 04.10.2024, 02.12.2024 and 31.12.2024 to Shri Vijaykumar Jani who is also a co-noticee but neither Mr.Vijay Kumar Jani nor the petitioner availed the opportunities provided for Cross-examination or hearing. However, being aggrieved and dis-satisfied, the petitioner has preferred this petition to quash and set aside the impugned Order-in-Original.

4.1. Learned advocate Mr.Pavan Godiawala appearing for the petitioner has submitted that the impugned order is passed without giving an opportunity of hearing to the petitioner or his Advocate and without affording any opportunity of cross-examination as prayed for by the petitioner on 04.10.2024. It was submitted that this petition is filed for a limited purpose so as to avail the

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opportunity to cross-examine the witnesses which was proposed by the petitioner in the application dated 04.10.2024.

4.2. It was therefore submitted that the petitioner is not desirous to make any submission on merits but the matter may be remanded back to the respondent-Authority only for the purpose of granting an opportunity of hearing to the petitioner as the Advocate for the petitioner could not remain present on two occasions i.e. on 26.12.2024 and on 15.01.2025 which is reflected in the impugned order.

4.3. Learned advocate Mr.Paval Godiawala further submitted that the respondent-Authority never intimated the petitioner that the cross-examination, so far as the Officers of the Departments are concerned, could not be

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granted though they are the persons who have issued the summons and also named in the relied upon documents and the petitioner was required to cross-examine the Officers of the Department so as to bring on record the way in which the inquiry was conducted by the Department.

4.4. It was further submitted that the petitioner has demonstrated in his reply dated 14.10.2024 as to how the persons who are named in the application dated 04.10.2024 are required to be cross-examined by the petitioner as they are referred to in the relied upon documents and the petitioner on the basis of the cross-examination was required to submit the written submissions and reply to the show-cause notice, however, without granting the opportunity of cross-

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examination and to submit the final reply by the petitioner, the impugned Order-in-Original is passed in violation of the principles of natural justice.

4.5. It was further submitted that in the facts of the case, the matter may be remanded back to the respondent No.2 so as to pass a fresh, de-novo order after giving opportunity of cross-examining the persons who are referred to in the application dated 04.10.2024 and further providing an opportunity to submit the final reply to the show-cause notice and opportunity of hearing to the petitioner.

5.1. On the other hand, learned advocate Mr.Neel Lakhani for the respondent Nos.1 and 2 submitted that sufficient opportunity is

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provided to the petitioner after the passing of the order by this Court in Special Civil Application No.18159 of 2019, however, the petitioner failed to avail such opportunity.

5.2. It was further submitted that the petitioner has an alternative remedy to challenge the impugned order by preferring an Appeal under Section 107 of the GST Act and this Court may not interfere at this stage while exercising the extra-ordinary jurisdiction under Article 227 of the Constitution of India considering the fact that the petitioner, despite of giving sufficient opportunity or hearing, has tried to delay the proceedings on the one pretext or other and therefore, it cannot be said that there is violation of principles of natural justice in the facts of the case.

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6. Having heard the learned advocates for the respective parties and having considered the material placed on record and on perusal of the impugned Order-in-Original passed by the respondent No.2, we are of the opinion that the petitioner has an alternative efficacious remedy to challenge the impugned order by preferring an Appeal under Section 107 of the GST Act as held by the Hon'ble Apex Court in case of ***The Assistant Commissioner of State Tax and Others Versus M/s.Commercial Steel Limited*** as under :

> *"11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution.*

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But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;
(ii) a violation of the principles of natural justice;
(iii) an excess of jurisdiction; or
(iv) a challenge to the vires of the statute or delegated legislation.

12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to

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the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case."

7. with regard to the contention raised on behalf of the petitioner that the petitioner has not been granted an opportunity of cross-examination of the persons who were named in the application dated 04.10.2024 is concerned, we are of the opinion that out of the five

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persons, four belongs to the Department who have either issued the summons or arrest memo and therefore, such persons are not required to be cross-examined by the petitioner and therefore, the respondent No.2 has rightly not granted the cross-examination of such Departmental Officers to the petitioner. So far as the cross-examination of Shri Vijay Kumar Jani is concerned, the opportunity was given as stated in the impugned order as under but neither Mr.Vijay Kumar Jani nor the petitioner appeared for cross-examination :

> *"25.4.1. The taxpayer sought the cross-examination of several individuals, namely Shri C.B.Mayanshi, Superintendent, Shri R.K.Ojha, Superintendent, Shri Rajeev Kumar Agarwal, Superintendent, all from CGST, Vadodara; Shri C.A.Chavada, Superintendent, CGST, Ahmedabad; and Shri Vijay Kumar Jani, a commission*

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agent from Bhavnagar. However, the Hon'ble High Court, in paragraph 5 of its order dated 06.05.2024, specifically directed cross-examination only of individuals mentioned in the relied-upon documents. Accordingly, the only person qualifying under this criterion is Shri Vijay Vijubhai Jani, whose name appears in the relied-upon documents and who is also a noticee in the present SCN dated 31.03.2023. Multiple personal hearing letters dated 27.09.2024, 02.12.2024, and 31.12.2024, as well as summons issued on 04.10.2024, 02.12.2024, and 31.12.2024, were sent to Shri Vijay Kumar Jani. Despite these efforts and the ample time and opportunities provided, he did not appear for a personal hearing.

The other individuals mentioned by the taxpayer do not appear in the relied-upon documents, and no valid reason for their cross-examination has been provided. Therefore, the request for their cross-examination is not

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entertained.

25.4.2. I find that the taxpayer sought cross-examination, as validated by the Hon'ble High Court order dated 06.05.2024, of Shri Vijay Vijubhai Jani, who is a commission agent or mediator facilitating the availability of scrap between purchasers and sellers. The taxpayer was aware of his involvement in the case, as evidenced by the recorded statement of Shri Vijay Vijubhai Jani dated 15.02.2019. However, the taxpayer's request for cross-examination lacked substantive reasoning or justification. Despite the opportunity for cross-examination being provided to Shri Vijay Vijubhai Jani, neither the taxpayer nor Shri Jani appeared to proceed with it. Given these facts and circumstances, the claim for cross-examination is deemed invalid and baseless, rendering it untenable. In this regard, I rely on the decision of the Hon'ble High Court of Andhra Pradesh in the case of

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Manidhari Stainless Wire Pvt, Ltd. - 2018 (360) E.L.T. 255 (A.P.), wherein it was held as follows:

Cross-examination - Right to cross-examine not absolute - If there are factual grounds to show that denial of cross-examination was based upon sound logic, then order of adjudication cannot be interfered with - Section 33A of Central Excise Act, 1944. [2013 (289) E.L.T. 3 (S.C.) relied on]. [para 28]- Petition dismissed."

8. We are also fortified by our view as referred in the impugned order by the decision of the Hon'ble Apex Court in the case of ***Telstar Travels Private Limited and Others Versus Enforcement Directorate*** reported in ***2013 (289) ELT Page 3 (SC)*** wherein, it is held as under :

"28. Coming to the case at hand, the

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adjudicating authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. But, there is no dispute that apart from what was seized from the business premises of the appellants, the adjudicating authority also placed reliance upon the documents produced by Miss Anita Chotrani and Mr Raut. These documents were, it is admitted, disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination. Such being the case, the refusal of the adjudicating authority to permit cross-examination of the witnesses producing the documents cannot even on the principles of the Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given

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to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the courts below. The third limb of the case of the appellants also in that view fails and is rejected."

9. So far as the contention of the petitioner that no opportunity of hearing was granted to the petitioner and petitioner was also prevented from filing any written submission and reply to the show-cause notice is concerned, it would be open for the petitioner to make the submissions before the Appellate Authority as the appeal proceedings are nothing but a continuation of the original proceedings.

10. In view of the above, without expressing

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any opinion on merits, the petition is dismissed with a liberty to the petitioner to file statuary Appeal as provided under Section 107 of the GST Act in accordance with law.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

PALAK

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CASE 26 OF 35

Hind Paper House v. The Commissioner State Goods and Service Tax, Delhi & Anr.

Court	High Court of Delhi
Bench	Prathiba M. Singh and Shail Jain, JJ.
Date	04.08.2025
Case no. / citation	W.P.(C) 3294/2025

Holding in brief

The Department failed to upload the full SCN with the RUDs on the portal (only a summary), but the petitioner, after receiving the physical copy, filed no detailed reply and kept seeking adjournments. As errors lay on both sides, the order was set aside and a hearing directed, with limitation left open.

Paragraphs highlighted

Paras 15 to 17. Highlighted passages are on compendium pages 380.

Status

Final order; matter remanded for hearing.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 373.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 4th August 2025

\+ **W.P.(C) 3294/2025 & CM APPL. 15563/2025**

HIND PAPER HOUSE .....Petitioner

Through: Mr. Vijay Gupta, Mr. Arihant Jain & Mr. Hari Om Thakur, Advs.

versus

THE COMMISSIONER STATE GOODS AND SERVICE TAX DELHI & ANR. .....Respondents

Through: Ms. Vaishali Gupta, Adv. for R/GNCTD.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition challenges the impugned Show Cause Notice dated 28th May, 2024 (hereinafter "*impugned SCN*") as also the consequential order dated 24th August, 2024 (hereinafter "*impugned order*"). The writ petition also challenges the order dated 16th December, 2024 by which the application for rectification by the Petitioner was also rejected.

3. The brief background is that a Form DRC-01 - Summary of the Show Cause Notice was issued on 28th May, 2024 and is stated to have been uploaded on the same date. The said Form DRC-01 raised a demand of Rs. 4,04,61,076/- in respect of the tax period April, 2019 to March, 2020. A date for personal hearing was also fixed on 28th June, 2024 at 11:00 a.m. As per the said Form DRC-01, the impugned SCN along with supporting documents was attached and uploaded along with the said Form. However, as per the

Petitioner, neither the impugned SCN nor the supporting documents had been uploaded along with Form DRC-01.

4. The Petitioner challenges the order dated 24th August, 2024 on various grounds, *inter alia,* as under:

i. That the impugned SCN was not uploaded and only Form DRC-01 was uploaded that too without any Relied upon Documents (hereinafter "*RUDs*").

ii. That the Form DRC-01 is not equivalent to a Show Cause Notice.

iii. That the RUDs were allegedly served through speed post on 15th June, 2024 only as per the Department which is also beyond the period of limitation.

iv. The impugned order was passed on 24th August, 2024 without providing a proper hearing.

v. That the Input Tax Credit was already reversed by the Petitioner and the said records were available with the Department prior to passing the impugned order.

5. On all these grounds quashing of the impugned SCN and the impugned order is sought.

6. On behalf of the Respondent-Ms. Gupta, ld. Counsel has handed across a short affidavit dated 30th July, 2025, signed by one Ms. Gomti Mattu, GSTO Ward 11, Department of Trade & Taxes,GNCTD which states as under:

> *"3. It is humbly submitted that a Show Cause Notice (DRC-01) under section 73 of the DGST Act was issued to the petitioner on 28.05.2024 (Ref No. ZD0705240354993). At the relevant time, due to technical glitch in Emsigner, GSTN had removed the Emsigner integration with Assessment module in GST BOWEB portal, as a result of which detailed summary*

of DRC-01 which was generated from the portal was not issued and could not be attached with the Show Cause Notice dated 28.05.2024.

4. It is submitted that after removing the technical glitch on the portal, hard copy of the detailed summary along with the Show Cause Notice dated 28.05.24 was sent through speed post (ED2940507291N) on 13.06.2025. It is submitted, on an enquiry from the Department of Posts, a letter dated 07.04.2025 was received confirming the delivery of the Speed Post to the Petitioner on 15.06.2024.
A copy of the DRC-01 along with detailed summary dated 28.05.2024 is annexed herewith and marked as ANNEXURE-1.
A copy of letter dated 07.04.2025 is annexed herewith and marked as ANNEXURE -2.
5. It is submitted that a reply dated 12.08.2024 was submitted that by the Petitioner to the SCN dated 28.05.2024 wherein it stated that, "We are busy in Income Tax Audit and is in stage of final end and all concerned are busy in audit and so, need short adjournment till 20.08.2024. We have in hand all supporting documents for our submissions but needs time to arrange and uploading." It is humbly submitted that a perusal of the reply dated 12.08.2024 reveals that the petitioner was in receipt of the SCN along with the detailed summary as no such objection was raised by the Petitioner.
A copy of the reply dated 12.08.2024 is annexed herewith and marked as ANNEXURE -3.
6. That after following due process of law, Demand order dated 24.08.2024 was issued by the Respondent. The petitioner filed a rectification dated 24.11.2024 of the DRC-07 dated 24.08.2024 without any supporting documents and resultantly, the same was rejected."

7. It is her submission that it was due to a technical glitch that the RUDs was not uploaded on the portal, though, the Form DRC-01 was itself uploaded

on 28th May, 2025. The RUDs along with the proper documents were served upon the Petitioner on 15th June, 2024. The proof of delivery is also placed on record. In addition, it is the stand of the Department that on three occasions, the Petitioner sought time to file a reply and no reply on merits was forthcoming.

8. The Court has heard ld. Counsel for the parties. Clearly, the Form DRC-01 which was uploaded on the portal would not be sufficient for any party to file a reply, as the details of the demand raised and the allegations against the Petitioner have not been mentioned therein. The service of the RUDs, as per the Department, itself happened on 15th June, 2024. This service is disputed by the Petitioner. Since the speed post tracking receipt and the register of the speed post from the postal depot has been placed on record along with the short affidavit by the Department, in the opinion of this Court, the same cannot be disputed.

9. The Petitioner repeatedly sought adjournments on 29th May, 2024, 12th August, 2024 as also on 22nd August, 2024. On all these occasions, the Petitioner did not deal with the issue on merits. In the three replies filed by the Petitioner including the last one *i.e.*, on 22nd August, 2024, no substantive argument has been raised by the Petitioner. The first reply was filed 29th May, 2024 wherein it was stated as under:

Form GST DRC-06

[See rule 142(4)]

Reply to the Show Cause Notice

ARN: ZD0705240391846 **Date: 29/05/2024**

1. GSTIN	07AACFH3834P1Z2	
2. Name	HIND PAPER HOUSE	
3. Details of Show Cause Notice	Reference No. ZD0705240354993	Date of issue 28/05/2024
4. Financial Year	2019-2020	
5. Reply		
A perusal of notice shows that it is unsigned digitally without any at tachment of RUD. No facts or grounds have been specified. No specific allegation for proposed demand as it is vague, bereft of any reasons. So notice be withdrawn		
6. Documents uploaded		
NA		
7. Option for personal hearing	☐ Yes	☑ No

8.Verification-

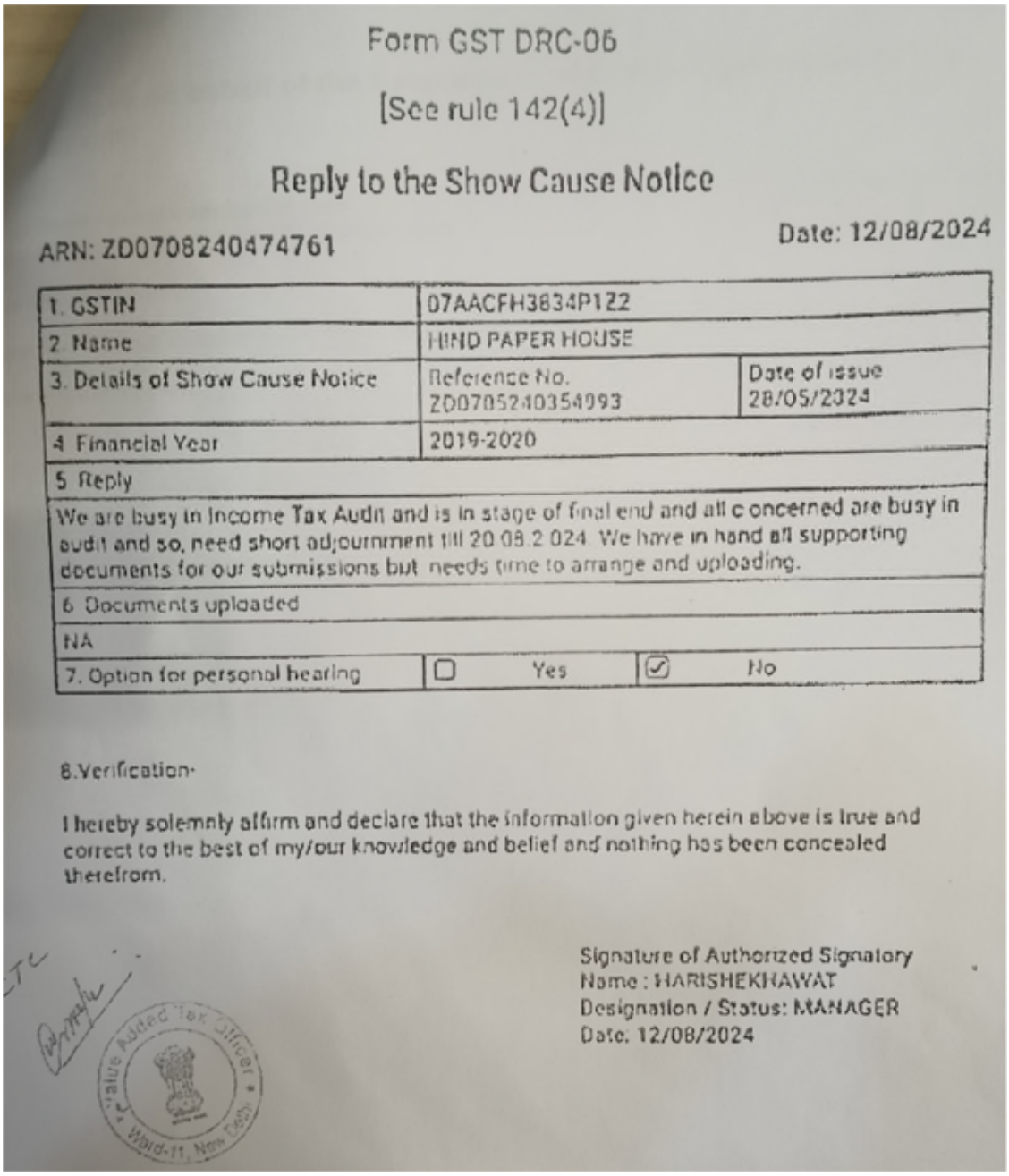
I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

For HIND PAPER HOUSE

Partner

Signature of Authorized Signatory
Name : HARISHEKHAWAT
Designation / Status: MANAGER
Date: 29/05/2024

10. The second reply was on 12th August, 2024 in which it was stated as under:



Form GST DRC-06

[See rule 142(4)]

Reply to the Show Cause Notice

ARN: ZD0708240474761 Date: 12/08/2024

1. GSTIN	07AACFH3834P1Z2	
2. Name	HIND PAPER HOUSE	
3. Details of Show Cause Notice	Reference No. ZD0705240354093	Date of issue 28/05/2024
4. Financial Year	2019-2020	
5. Reply		
We are busy in Income Tax Audit and is in stage of final end and all concerned are busy in audit and so, need short adjournment till 20.08.2024. We have in hand all supporting documents for our submissions but needs time to arrange and uploading.		
6. Documents uploaded		
NA		
7. Option for personal hearing	☐ Yes	☑ No

8.Verification-

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory
Name : HARISHEKHAWAT
Designation / Status: MANAGER
Date: 12/08/2024

11. The last reply is dated 22nd August, 2024 in which it was stated as under:

Form GST DRC-06

[See rule 142(4)]

Reply to the Show Cause Notice

ARN: ZD070824077477T **Date: 22/08/2024**

1. GSTIN	07AACFH3834P1Z2	
2. Name	HIND PAPER HOUSE	
3. Details of Show Cause Notice	Reference No. ZD0705240354993	Date of issue 28/05/2024
4. Financial Year	2019-2020	
5. Reply		
The SCN as well as DRC-01 have no RUD or annexture attachment without specific details of tax short paid, we are unable to check the records and reply thereon. The Hon'ble Delhi High Court in following case hel d that SCN issued without reasons/allegations violates Principles of Natural: Surender Kumar Jain Vs Principal Commissioner: W.P. (C) 17700 /2022 dt. 25/01/2023 (DHC) SCN/Order issued without giving any specifi c details or reasons for taking any action are not sustainable: Marg Erp Limited Vs Commissioner of Delhi Goods and Serv ice Tax: W.P. (C) 872/2023 dt.03/02/2023 (DHC). We are trying to provi de some details of our own which shown negligible variation on account of rounding off the tax amount. Hence, the SCN be withdrawn and or RU D be provided for allegation specific reply.		
6. Documents uploaded		
reconciliation.pdf		
7. Option for personal hearing	☐ Yes	☑ No

8.Verification-

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory
Name : HARISHEKHAWAT
Designation / Status: MANAGER
Date: 22/08/2024

For HIND PAPER HOUSE

Partner

12. According to the Petitioner, the summary report for notice 2019-20 which was uploaded on 22nd August, 2024 would have shown that the Input Tax Credit was reversed.

13. However, a perusal of the last reply also shows that the Petitioner again

sought time for filing a specific reply along with a request to provide the RUDs.

14. The impugned order itself was passed on 24th August, 2024. It is admitted that the Petitioner did not appear at the hearing which was fixed and had merely uploaded the reply along with the so-called summary report. According to the Petitioner, no date of hearing was fixed on 24th August, 2024.

15. After considering the entire chronology of events, it is clear that there have been errors both by the Department as also by the Petitioner. The initial error of the Department, was not to upload the entire summary, the impugned SCN along with the RUDs on the portal on 28th May, 2025. However, once the physical copy of the same was received on 15th June, 2024 the Petitioner chose not to file any detailed reply and kept seeking adjournments.

16. Under these circumstances, in the opinion of this Court, the impugned order deserves to be set aside and the Petitioner deserves to be given a hearing before the Adjudicating Authority.

17. The plea of the Petitioner that the impugned SCN is beyond limitation may also be raised before the Adjudication Authority.

18. The short affidavit handed across by the Department is taken on record.

19. All contentions of the parties are left upon. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 4, 2025/*dj/msh*

CASE 27 OF 35

Additional Director General (Adjudication), DRI v. M/s Suresh Kumar & Co. Impex Pvt. Ltd. & Ors.

Court	Supreme Court of India
Bench	J.B. Pardiwala and K.V. Viswanathan, JJ.
Date	20.08.2025
Case no. / citation	2025 INSC 1050; Civil Appeal Nos. 11339-11342 of 2018

Holding in brief

Electronic evidence under the Customs Act. The Court found due compliance with section 138C(4) from the record of proceedings and the unretracted statements under section 108, without a certificate in strict form. Evidentiary value of such statements, with section 138B, remains to be examined; the Tribunal was to rehear on other grounds.

Paragraphs highlighted

Paras 43, 45 and 47 to 49. Highlighted passages are on compendium pages 401-403.

Status

Final judgment; Revenue's appeals partly allowed and remanded.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 382.

2025 INSC 1050

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.11339-11342 OF 2018

ADDITIONAL DIRECTOR GENERAL ADJUDICATION, DIRECTORATE OF REVENUE INTELLIGENCE **APPELLANT(S)**

VERSUS

SURESH KUMAR AND CO. IMPEX PVT. LTD. & ORS. **RESPONDENT(S)**

O R D E R

1. Permission for amendment of appeal(s) is granted.

2. These statutory appeals under Section 130E of the Customs Act, 1962 (for short "the Act, 1962") are at the instance of the Revenue and are directed against the judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the CESTAT"), New Delhi dated 17.04.2018, by which the appeals filed by the respondents-assessees herein came to be allowed and thereby the order in original dated 17.07.2017 passed by the Additional Director General (Adjudication), Directorate of Revenue Intelligence, New Delhi imposing penalty upon the respondents herein came to be set aside.

3. It appears from the materials on record that the respondents

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herein were engaged in the business of importing branded food items from various countries.

4. After the import of the branded food items, they were being sold in Delhi and Mumbai, respectively. Acting upon the information, the business as well as the residential premises of the respondents were raided, and an extensive search was undertaken by the officials of the department. In the course of various searches, the department was able to procure evidence which *prima facie* established that the respondents had short paid the duty on the import of the goods in question. The investigation revealed that while filing the Bills of Entry for the imported goods, there was a failure to declare the actual RSP/MRP at which the goods were being sold to the ultimate consumers.

5. Thus, it is the case of the revenue that the importers were thereby declaring lower RSP/MRP, which resulted in evasion of duties.

6. In such circumstances, referred to above, a show cause notice dated 06.06.2016 came to be issued to the respondents, calling upon them to show cause as to why the demand for differential duties of (a) Rs.9,24,50,644/- be recovered from the respondent no.1 and (b) Rs.9,83,614/- be recovered from the respondent no.2, respectively. The show cause notice also called upon the respondents to show cause as to why interest and penalty should

not be imposed and the imported goods be confiscated.

7. The show cause notice was adjudicated by the Adjudicating Authority and *vide* the Order in original dated 17.07.2017, the Commissioner confirmed the show cause notice and thereby raised a demand with interest and penalty. The order in original passed by the Adjudicating Authority came to be challenged before the CESTAT by filing appeals.

8. It appears on plain reading of the entire impugned order that the CESTAT reached the conclusion that the documents relied upon by the department for the purpose of proceeding against the respondents herein could not have been made admissible in evidence, in view of non-compliance of the provision of Section 138C(4)of the Act, 1962. According to the Tribunal, all these documents relied upon by the department were collected from the electronic devices of the respondents and in such circumstances, it was expected of the officials to strictly comply with the provisions of Section 138C(4) of the Act, 1962.

9. The Tribunal, while allowing the appeals filed by the respondents herein, clarified that an argument was canvassed before it on behalf of the respondents herein as assessees as regards Section 138B of the Act, 1962, however, since the Tribunal was inclined to allow the appeals only on the ground of non-compliance of Section 138C(4) of the Act, 1962, it did not deem

fit to go into any other issues.

10. Thus, the appeals filed by the respondents before the Tribunal came to be allowed.

11. The Tribunal, while allowing the appeals, made the following observations:-

> ***"11. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V.(supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted. In any proceeding. We note that the Section 138C of the Customs Act is pari materia to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer print-outs etc. recovered during the course of investigation can be admitted as in the present proceedings only subject to the satisfaction of the sub-section (2) of Section 138C. This refers to the certificate from a responsible person in relation to the operation of the relevant lap-top/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer print-outs from the seized lap-tops and other electronic devices have not been accompanied by a certificate as required by the Section 138C(2) as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of under-valuation and mis-declaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices seized from the residential premises of Shri Nikhil Asrani, Director in respect of which the requirement of Section 138C(2) has not been satisfied. On this ground, the impugned order suffers from uncurable error and hence, is liable to be set aside.***
>
> ***12. The ld. AR for Revenue relied upon the decision of the Tribunal in the case of M/s. Laxmi Enterprises (supra) in which the Tribunal upheld the charge of under-valuation and demand for differential duty. In the said decision, Tribunal***

overruled the objection of the appellant in connection with Section 138C, by holding that the documents printed out from lap-top will be admissible as evidence in view of the fact that the truth of such documents stand admitted by the proprietor in his statement.

We have gone through the said decision of the Tribunal and we note that the judgement of the Hon'ble Supreme Court in the case of Anvar P.V. (supra) has not been cited and was never brought to the notice of the Bench. Consequently, we are of the view that the decision in the case of Laxmi Enterprises is not applicable to the facts of the present case.

13. It is submitted by the ld. Counsel for the appellant that the adjudicating authority had not examined the witnesses, as per the provisions of Section 138B of the Act, 1962. He has relied upon the decision of Hon'ble Delhi High Court, in the case of J&K Cigaratte - Vs. - Collector of Customs - 2009 (242) ELT (Del.). In that case, the Hon'ble High Court, while dealing with Section 9D(1) of the Central Excise Act, 1944, (Pari materia to Section 138B of the Customs Act, 1962) have held that the procedure as prescribed in the statute is required to be followed for proving the truth of the statement. The said decision of the Hon'ble Delhi High Court has also been relied upon by the Hon'ble Punjab & Haryana High Court, in the case of G-Tech Industries - Vs. - Union of India-2016 (339) ELT 209 (P&H). We find force in the submissions of the ld. Counsel for the appellant that the adjudicating authority had not followed the procedures prescribed under Section 138B of the Act, 1962. We have already observed that the demand of duty cannot be sustained, as the evidences as available for the alleged under valuation cannot be accepted under the law, as per the mandates of Section 138 C of the Act. Hence, there is no need to discuss the said issues, as raised by the appellants regarding consideration of the Provisions of Section 138B ibid.

14. In view of the above discussions and analysis, we do not find any merits in the Impugned order, In confirming the adjudged demands against the appellants. Therefore, the impugned order is set-aside and the appeals filed by the appellants are allowed."

12. In such circumstances, referred to above, the revenue is here before this Court with the present appeals.

13. We heard Ms. Nisha Bagchi, the learned senior counsel appearing for the revenue and Mr. Ashish Batra, the learned counsel appearing for the respondents.

14. The learned counsel appearing for the revenue would vehemently submit that the Tribunal committed a serious error in allowing the appeals filed by the assessee on the ground of non-compliance of Section 138C(4) of the Act, 1962. She would submit that there is cogent and sufficient evidence on record to indicate compliance of Section 138C(4) of the Act, 1962 in substance.

15. She would further submit that the documents collected from the electronic devices owned by the assessees at the time of search have been duly acknowledged by the assessees in their statements recorded under Section 108 of the Act, 1962.

16. With a view to fortify her submissions noted aforesaid, she placed strong reliance on the decision of this Court in the case of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others* reported in (2020) 7 SSC 1, more particularly, the observations made by the Court in Paras 51 and 52, respectively.

17. The paras 51 and 52 respectively read thus:-

> ***"51. On an application of the aforesaid maxims to the present case, it is clear that though Section***

65-B(4) is mandatory, yet, on the facts of this case, the respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.

52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC."

18. In the course of the hearing of these appeals, the learned counsel appearing for the revenue provided us with a compilation consisting of documents in the form of Record of Proceedings dated 06.07.2015, 21.07.2015 and 21.04.2016 respectively.

19. The Record of Proceeding dated 06.07.2015 reads thus:-

"In connection with the investigations in respect of imports made by M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO) A-17, Sonu Tower, IInd Floor, Dr. Mukherjee Nagar Commercial Complex, Delhi - 110 009, the officers of Directorate of Revenue Intelligence (Hqrs.), 7th floor, I.P. Bhawan, I.P. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No.1092, Bhalswa Village, Near Azadpur Bypass, Delhi - 110 033, had resumed certain documents, Lenovo Make desktop and one laptops from the abovementioned office-cum- godown premises.

2. In today's proceeding, it was proposed to take the printouts of documents from the external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18, which was copied under Records of Proceeding dated 19.06.2015 and 23.06.2015. Shri Sanjay Gupta, Senior Accountant of M/s SKCO and Shri Sushil Kumar, Assistant Accountant of M/s SKCO presented themselves at DRI (Hqrs.) office to witness the proceedings. One Envelope was produced before Shri Sanjay Gupta and Shri Sushil Kumar which was sealed with a paper slip containing dated signature of Shri Sanjay Gupta, Forensic Expert and DRI Officer. The paper seals on the said envelops was checked by Shri Sanjay Gupta and Shri Sushil Kumar, which was found intact.

3. Shri Sanjay Gupta removed the paper seal of the said envelop and took out one external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18. The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain printouts were taken from the said hard disk. The printouts were serially numbered from 1 to 103. Shri Sanjay Gupta and Shri Sushil Kumar put their dated signatures on all the

said pages (s. no. 1 to 103) as a token of their authenticity and their presence during the course of printing of these documents from the said external hard disk.

4. Thereafter, the said external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18 was put in an envelop and the said envelop was sealed with a paper slip bearing dated signatures of Shri Sanjay Gupta, Shri Sushil Kumar and the DRI Officer.

5. The proceedings started at 1200 hrs on 06.07.2015 and concluded at 2010 hrs on same day i.e. 06.07.2015. Shri Sanjay Gupta and Shri Sushil Kumar on being enquired by the DRI officers informed that they are fully agree to the contents of Records of Proceedings dated 06.07.2015 and that the contents were recorded as per the actual Proceedings"

20. The record of Proceeding dated 21.07.2015 reads thus:-

"In connection with the investigations in respect of imports made by M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO A-17. Sonu Tower. IInd Floor. Dr. Mukherjee Nagar Commercial Complex. Delhi - 110 009. the officers of Directorate of Revenue Intelligence (Hqrs.). 7th floor. I.P. Bhawan. I.P. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No.1092. Bhalswa Village. Near Azadpur Bypass. Delhi - 110 033 had resumed certain documents. Lenovo Make desktop and one laptops from the abovementioned office-cum-godown premises and resumed two laptops (one Sony make and one Asus make). one I-pad and one I-Phone from the residential premises vide Panchnama dated 16.06.2015 drawn at residential premises at B-111/303. 19. Rajpur Road. Delhi - 110 054. Another laptop of Sony make was submitted in DRI office by

Shri Nikhil Asrani, Director of M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. On 16.06.2015.

2. In today's proceeding. It was proposed to take the printouts of e mail / documents from the external Hard Disk of make WD Elements, bearing S/N WX4 IA45DUD6E, which was copied under Records of Proceeding dated 29.06.2015. Shri Nikhil Asrani, Director of M/s SKCO presented himself at DRI (Hqrs.) office to witness the proceedings. One envelope was produced before Shri Nikhil Asrani which was sealed with a paper slip containing dated signature of Shri Sanjay Gupta and DRI Officer. The paper seals on the said envelops was checked by Shri Nikhil Asrani. which was found intact.

3. Shri Nikhil Asrani removed the paper seal of the said envelop and took out one external Hard Disk of make WD Elements, bearing S/N WX41 A45DUD6E. The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain e mail data was extracted in Microsoft Outlook and certain printouts were taken from the said data. The printouts were serially numbered from 1 to 237. Shri Nikhil Asrani put his dated signatures on all the said pages (s. no. I to 237) as a token of their authenticity and his presence during the course of printing of these documents from the said external hard disk.

4. Thereafter, the said external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E was put in an envelop and the said envelop was sealed with a paper slip bearing dated signatures of Shri Nikhil Asrani and the DRI Officer.

5. The proceedings started at 1640 hrs on 21.07.2015 and concluded at 2040 hrs on same day i.e. 21.07.2015. Shri Nikhil Asrani on being enquired by the DRI officers informed that he fully agrees to the contents of Records of Proceedings dated 21.07.2015 And that the contents were recorded as per the actual proceedings."

21. The Record of Proceeding dated 21.04.2016 reads thus:-

"In connection with the investigations in respect of imports made by M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO) A-17, Sonu Tower, IInd Floor, Dr. Mukherjee Nagar Commercial Complex, Delhi - 110 009, the officers of Directorate of Revenue Intelligence (Hqrs.), 7th floor, IP. Bhawan, IP. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No. 1092, Bhalswa Village, Near Azadpur Bypass, Delhi - 110 033, had resumed certain documents, Lenovo Make desktop and one laptops from the abovementioned office-cum-godown premises and resumed two laptops (one Sony make and one Asus make), one I-pad and one I-Phone from the residential premises vide Panchnama dated 16. 06.2015 drawn at residential premises at B-III/303, 19, Rajpur Road, Delhi - 110 054. Another laptop of Sony make was submitted in DRI office by Shri Nikhil Asrani, Director of M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. on 16.06.2015.

2. In today's proceeding, it was proposed to take the printouts of e mail I documents from the external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E, which was copied under Records of Proceeding dated 29.06.2015. Shri Aseem Asrani, Director of M/s SKCO presented himself at DRI (Hqrs.) office to witness the proceedings. One envelope was produced before Shri Aseem Asrani which was sealed with a paper slip containing dated signature of Shri Nikhil Asrani and DRI Officer. The paper seals on the said envelops was checked by Shri Aseem Asrani, which was found intact.

3. Shri Aseem Asrani removed the paper seal of the said envelop and took out one external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E. The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain e mail data was extracted in Microsoft Outlook and certain printouts were taken from the said data. The printouts were serially numbered from 1 to 97. Shri Aseem Asrani put his dated signatures on all the said pages (s. no.1 to 97) as a token of their authenticity and his presence during the course of printing of these documents from the said external hard disk.

4. Thereafter, the said external Hard Disk of make WO Elements, bearing S/N WX41A45DUD6E was put in an envelop and the said envelop was sealed with a paper slip bearing dated signatures of Shri Aseem Asrani and the DRI Officer.

5. The proceedings started at 1500 hrs on 21.04.2016 and concluded at 1705 hrs on same day i.e. 21.04.2016. Shri Aseem Asrani on being enquired

by the DRI officers informed that he fully agrees to the contents of Records of Proceedings dated 21.04.2016 and that the contents were recorded as per the actual proceedings."

22. Thereafter, she took us through the statements of Mr. Nikhil Asrani, recorded under Section 108 of the Act, 1962 dated 03.08.2015, 21.9.2015, 22.4.2016 and 17.5.2016 respectively wherein Nikhil Asrani, has stated as under:-

"Statement dated 03.08.2015

"I have been shown the Record of Proceeding dated 21.07.2015. I have put my dated signatures on the same as a token of having seen the same. I agree with the contents of the Record of Proceedings dated 21.07.2015 as the same have been correctly recorded. I have been shown the documents serially numbered from Page No. 1 to 237, which were printed out from e-mail data under the Record of Proceeding dated 21.07.2015. I was present during the course of printing of the said documents. The said documents (page No. 1 to 237) pertain to my e- mail nikhil@skco.in. I have put my dated signature all the pages as a token of their authenticity. On being asked, I explain the said documents as under."

Statement dated 21.9.2015

"I have been shown the statement dated 11.09.2015 containing two pages of Shri Suresh Kumar Asrani recorded under section 108 of the Customs Act, 1962. I have read and completely understood the same. I have put my dated signatures on both the pages of the said statement. I fully agree with the contents of the said statement dated 11.09.2015 of Sh. Suresh Kumar Asrani."

Statement dated 22.4.2016

"I have been shown the Record of Proceeding dated 21.04.2016 and print out of pages No. 1 to 97. I have put my dated signatures on the said Record of Proceeding dated 21.04.2016 and all the 97 pages in the token of having seen the same and their authenticity."

Statement dated 17.5.2016

I have been shown the Record of Proceeding dated

06.07.2015 and print out of pages No. 1 to 103 I have put my dated signatures on the said Record of Proceeding dated 06.07.2015 and all the 103 pages in the token of having seen the same and their authenticity."

23. She also invited our attention to the statement of one Mr. Aseem Asrani recorded on 04.08.2015 wherein Mr. Aseem Asrani stated as under:-

"My elder brother Shri Nikhil Asrani is the right person to tell about the same. I am also one of the two Directors in M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO). On being asked, I state that my elder brother Shri Nikhil Asrani is also a Director in M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. I have been staying at the above address for the last ten years along with my parents and brother's family. I am looking after warehousing, logistics and dispatches of M/ s. SKCO."

24. In the last, she invited our attention to the statement of Mr. Suresh Kumar Asrani recorded on 11.09.2015, wherein the following has been stated:-

"I and my wife retired from the directorship of M/s SKCO in the year 2008. Thereafter, my sons Shri Nikhil Asrani and Shri Aseem Asrani became the directors in M/ s SKCO. Shri Nikhil Asrani is the responsible for all the imports made by M/s SKCO from 2008. On being asked, I state that my son Shri Nikhil Asrani was dealing with the foreign suppliers related supply of food stuffs and price negotiation etc. On being further asked, I state that M/s S.N. Agrotech was founded in the month of January, 2014 in my proprietorship. M/s S.N. Agrotech has its registered office at 21/31, Mall Road, Delhi working with nil staff. My son Shri Nikhil Asrani is looking after all the work of M/s S.N. Agrotech. On being further asked, I state that this is only a residential flat in the name of myself and my wife Smt. Neerja Asrani. This address is being only used as postal address of M/ s S.N. Agrotech. On being further

asked, I state that it is vacant and locked since the date of purchase."

25. In such circumstances, referred to above, the learned counsel appearing for the revenue would submit that there being merit in the appeals filed by the revenue, the same be allowed and the impugned order be set aside.

26. On the other hand, the learned counsel appearing for the respondents, while vehemently opposing these appeals would submit that no error, not to speak of any error of law, could be said to have been committed by the Tribunal in allowing the appeals on the ground of non-compliance of the mandatory provision of Section 138C(4) of the Act, 1962.

27. The learned counsel would submit that recording of statements under Section 108 of the Act, 1962 containing acknowledgment of documents being collected from the electronic devices of the assessees cannot be termed as due compliance of Section 138C(4) of the Act, 1962.

28. The learned counsel would also seek to rely upon the very same judgement of this Court upon which the revenue has placed reliance. However, he would like to place reliance on the observations made in paragraphs 38 and 45, respectively therein.

29. The learned counsel would submit that in the event this Court would like to allow the appeals of the revenue, then in such circumstances, the matter be remanded to the Tribunal for the

purpose of considering the other submissions which were canvassed by the respondents before the Tribunal and the Tribunal thought fit not to deal with those submissions, as the Tribunal was inclined to allow the appeals only on the ground of non-compliance of Section 138C(4) of the Act, 1962.

30. The only question that falls for our consideration is whether the Tribunal committed any error in passing the impugned order?

31. Section 138C(4)reads thus:-

> ***"138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.—***
>
> ***(1) xxx xxx xxx***
>
> ***(2) xxx xxx xxx***
>
> ***(3) xxx xxx xxx***
>
> ***(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—***
>
> ***(a) identifying the document containing the statement and describing the manner in which it was produced;***
>
> ***(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;***
>
> ***(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,***
>
> ***and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter***

stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

32. Sub-section 4 of Section 138C makes it abundantly clear that if any statement is to be read into evidence and such documents are computer printouts, then a certificate has to be obtained in accordance with (a), (b) and (c) of sub-section 4, referred to above.

33. The Indian Evidence Act also declares that the expressions "Certifying Authority", "electronic signature", "Electronic Signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act.

34. At this stage, we must look into Sections 65A and 65B of the Indian Evidence Act. The same read thus:-

"65A. Special provisions as to evidence relating to electronic record.—The contents of electronic records may be proved in accordance with the provisions of Section 65B.

65B. Admissibility of electronic records.—(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the

original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be

construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

35. Section 65B(4) of the Indian Evidence Act is *pari materia* to Section 138C(4) of the Act, 1962.

36. Section 65B(4) of the Indian Evidence Act came up for consideration before a three judge Bench of this Court in *Arjun Panditrao Khotkar* (supra).

37. This Court was called upon to consider in what manner Section 65B(4) should be construed as mandatory and in what manner it should be understood to have been duly complied with in its letter and spirit. While explaining the mandatory nature of Section 65 B(4) this Court applied two Latin maxims.

> ***"(i) impotentia excusat legem.***
>
> ***(ii) lex non cogit ad impossibilia."***

38. Two maxims referred to above have been explained by this Court in the Presidential Poll judgment reported in (1974) 2 SCC 33.

39. We quote para 15 of the judgment referred to above which reads thus:-

> ***"15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. 'Where the law creates a duty or charge, and the party is disabled to***

perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.' Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Edn. at pp. 162-63 and Craies on Statute Law, 6th Edn. at p. 268.)"

40. Applying the two maxims referred to above, this Court proceeded to take the view that though Section 65B4 is mandatory, yet it would all depend on the facts of each case, how the same could be said to have been duly complied with.

41. In the facts of the said case, this Court said that the respondents had done everything possible to obtain the necessary certificate which was to be given by a third party over whom the respondents therein had no control and, in such circumstances, must be relieved of the mandatory obligation contained in the said subsection.

42. We have already reproduced paras 51 and 52 respectively of *Arjun Panditrao Khotkar* (supra) above.

43. Keeping the aforesaid in mind, we are of the view and, more particularly, considering the Record of Proceedings duly signed by the respondents, including the various statements of the respondents recorded under Section 108 of the Act, 1962, that there was due compliance of Section 138C(4) of the Act, 1962.

When we say due compliance, the same should not mean that a particular certificate *stricto senso* in accordance with Section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded under Section 108 of the Act, 1962 could be said to be due compliance of Section 138C(4)of the Act, 1962.

44. It is pertinent to note at this stage that at no point of time the statements recorded under Section 108 of the Act, 1962 came to be retracted.

45. Even while giving reply to the show cause notice, the contents of such statements recorded under Section 108 of the Act, 1962 were not disputed. This, of course, would be relevant only insofar as determining whether there has been due compliance of Section 138C(4) of the Act, 1962 is concerned. The evidentiary value of such Section 108 statements in any other proceedings, if any would have to be considered in accordance with law, including the compliance of Section 138B of the Act, 1962.

46. At this stage, we must also look into the observations made by this Court in the case of *"Kum. Shubha @ Shubhashankar vs. State of Karnataka and Another,"* reported in 2025 SSC online SC 1426 relied upon by the learned counsel appearing for the revenue. We quote:-

> **"A certificate not given in the prescribed format per se will not make it invalid, especially when**

the authenticity of these marked documents is not in dispute."

47. In view of the aforesaid, we partly allow these appeals of the revenue.

48. The judgment and order passed by the Tribunal is hereby set aside. The appeals filed by the assessees before the Tribunal are ordered to be restored to its original file and to be reheard by the Tribunal on grounds other than Section 138C(4) of the Act, 1962.

49. It is needless to clarify that on remand the Tribunal shall rehear the entire appeals on their own merits without being influenced in any manner by any of the observations made by this Court. Our observations are confined only on the issue of Section 138C(4) of the Act, 1962.

50. Pending application(s), if any, stands disposed of.

.....J.
[J.B.PARDIWALA]

.....J.
[K.V. VISWANATHAN]

New Delhi
20th August, 2025.

CASE 28 OF 35

M/s Balaji Enterprises v. The Principal Commissioner, DGGI, Meerut Zonal Unit & Ors.

Court	High Court of Delhi
Bench	Prathiba M. Singh and Shail Jain, JJ.
Date	06.10.2025
Case no. / citation	W.P.(C) 15237/2025

Holding in brief

Under section 67(5) CGST Act copies of seized data cannot be denied, though they may be made in the presence of an authorised officer unless it is recorded in writing that this would prejudice the investigation. As the data had been cloned, the proprietor was to receive copies of the entire set of documents and data.

Paragraphs highlighted

Paras 13 and 16. Highlighted passages are on compendium pages 408-409.

Status

Final order; petition disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 405.

$~74

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 6th October, 2025

\+ **W.P.(C) 15237/2025 & CM APPL. 62448/2025**

M/S BALAJI ENTERPRISES .....Petitioner

Through: Mr. Shivender Kr. Sharma, Ms. Urooj Chaudhary and Ms. Esha Sharma, Advs.

versus

THE PRINCIPAL COMMISSIONER, DGGI, MEERUT ZONAL UNIT & ORS. .....Respondents

Through: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur, Mr. Jai Ahuja, Mr. Akshay Saxena, Ms. Shivali Saxena and Mr. Sanidhya Sharma, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 62448/2025

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 15237/2025

3. The present petition has been filed by the Petitioner - M/s Balaji Enterprises, through its proprietor Mr. Sandeep Singhal, under Article 226 of the Constitution of India, *inter alia*, seeking return of the electronic devices, documents, records, books, etc., seized from the Petitioner *vide* seizure dated 1st July, 2025.

4. The copy of the *panchnama* dated 1st July, 2025 drawn at the office premises of Mr. Sandeep Singhal, at PD-99A, Ground Floor, Pitampura, Delhi-110034 *(hereinafter, 'panchnama')*, would show that the seized goods are as follows:

"

Sl. No.	*Description*	*No.*	*Page Nos*
1	*2*	*3*	*4*
1.	*I-Phone15 (Model No. MTP03HN/A) (Serial No. HK99F4X4XQ) (IMEI 1: 358388750533018, IMEI 2:358388750408087)*	*1*	
2.	*Pen drives (Geonix-1, Sandisk-2, HP 32GB- 1, Kingston 16-1)*	*5*	
3.	*Samsung Galaxy Z-Fold 6 (Model Name-SM-F956B/DS) (Serial No. RFCX70SPKWH) (IMEI 1: 352898271056765, IMEI 2: 353203241055764)*		
4.	*Hard Disk Drive- WD Elements (S. No. WXPZAB22RLXL)*	*1*	
5.	*HP Pavilion Laptop 13" (Silver Gray Colour) Device ID-DG5514D3-64EB-425A-9E32-IDFC27BB7BB9*	*1*	
6.	*Vivo 1718 (IMEI 1: 866945037007738, IMEI 2: 866945037007720)*	*1*	
7.	*Zebronics Bing CPU*	*1*	
8.	*113 Stamps/ seals of firms/ company as individually stamped on 5 no. of pages*	*113*	*1 to 5*
9.	*Neelgagan Note Pads*	*7*	*i. 10 filled pages ii . 52 filled pages iii. 09 filled pages iv. 48 filled pages v. 39 filled pages vi. 11 filled pages vii. 15 filled pages*
10.	*A green notebook*	*1*	*24 filled pages*
11.	*Loose papers*		*15 pages*

"

5. Ms. Chaudhary, ld. Counsel for the Petitioner submits that since the GST Department has already made copies of all the records, including the electronic

gadgets, the devices should be returned. Alternatively, in the event the devices are not returned, copies of the data contained therein, along with the other documents, should be provided to the Petitioner.

6. It is further submitted by ld. Counsel that the Petitioner's interest cannot be detrimentally affected by not even providing the copies of the data contained in seized documents and the electronic gadgets.

7. Mr. Harpreet Singh, ld. SSC for the Respondent submits that the Petitioner is not cooperating in the investigation and ought to appear for recording of his statement, as the GST Department wishes to confront him in respect of documents which have been seized.

8. The Court has considered the matter. Section 67 of the Central Goods and Services Tax Act, 2017 *(hereinafter, 'CGST Act')* vests the power of inspection, search, seizure and arrest with the GST Department.

9. Section 67(3), 67(4) and 67(5) of the CGST Act reads as under:

> *"**Section 67. Power of inspection, search and seizure.***
>
> *(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.*
>
> *(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.*

> *(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation…"*

10. In terms of Section 67(3) of the CGST Act, the documents or other gadgets etc., produced by a taxable person, if not relied upon by the GST Department, are to be returned within a period of 30 days.

11. Additionally, Section 67(5) of the CGST Act clearly provides that in respect of documents that are seized, the person from whom the seizure is made shall be entitled to make copies thereof, in the presence of an Authorised Officer.

12. At this stage, it is submitted on behalf of the GST Department that Section 67(5) of the CGST Act has a caveat that such entitlement shall not extend to circumstances where providing copies would be prejudicial to the investigation.

13. A perusal of Section 67(5) of the CGST Act clearly shows that copies of the seized data cannot be denied to the Petitioner. However, such copies can be made in the presence of an Authorised Officer, unless it is recorded in writing, that providing copies would be prejudicial to the investigation.

14. The *panchnama* in this case records as under:

> *"The afore-detailed 11 electronic devices were put up before us which were found to be packed in envelopes, which were opened before us in the presence of advocate Sh. Kushagra Verma and Sh. Santosh Kumar. Forensic Expert from M/s Omnicomp, New Delhi, hired*

> *by the DGGI officials. Thereafter, the devices were opened and the contained data in the above listed devices was retrieved and downloaded from the aforesaid devices in Hard Drives with master Copy S.No. WX42AC4RTNPK and Working Copy S.No.- WX42AC4RTER9, which was found to be concerned for the ongoing investigation.* ***The printout of cloning & data extraction report for the devices was taken out and each page was duly signed by Sh. Santosh Kumar, Forensic Expert, advocate Sh. Kushagra Verma and we had signed on each page of the report along with the master Copy which was sealed in front of us.****"*

15. Thus, it is evident from the foregoing that the GST Department has downloaded the data and cloning has also been completed, although some part of it may still be outstanding.

16. Be that as it may, in order to resolve this issue, it is directed that Mr. Sandeep Singhal, the proprietor of the Petitioner, shall appear in person before the GST Department and in the presence of an Authorised Officer, copies of the entire set of documents and data shall be provided to him.

17. Needless to add, the Petitioner would be duty bound to cooperate in the investigation.

18. Accordingly, the present petition is disposed of in the above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 6, 2025
dj/sm

Compendium: RUDs and natural justice | page 409 of 465 Back to Index

CASE 29 OF 35

M/s Surendra Prasad Yarlagadda v. Assistant Commissioner State Tax & 2 Others

Court	High Court of Allahabad
Bench	Saumitra Dayal Singh and Indrajeet Shukla, JJ.
Date	14.10.2025
Case no. / citation	Writ Tax No. 5398 of 2025

Holding in brief

Section 73 order under the UPGST Act (tax of Rs. 9.17 lakh) set aside on facts similar to earlier cases, subject to a deposit. The adjudicating authority is to supply the notice and the RUDs within two weeks of compliance, the petitioner to reply within four weeks, followed by a hearing with two weeks' notice, to conclude within six months.

Paragraphs highlighted

Paras 4 and 5. Highlighted passages are on compendium pages 411-412.

Status

Final order; matter remitted on conditions.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 411.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 5398 of 2025

M/S Surendra Prasad Yarlagadda

.....Petitioner(s)

Versus

Assistant Commissioner State Tax And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Harsh Vardhan Gupta
Counsel for Respondent(s)	:	C.S.C., Dhananjay Awasthi

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE INDRAJEET SHUKLA, J.

1. Heard Sri Harsh Vardhan Gupta, learned counsel for the petitioner and Sri Arvind Mishra, learned counsel for the revenue and perused the record.

2. The present writ petition has been filed challenging the Adjudication Order dated 18.04.2024 passed under Section 73 of the U.P.G.S.T. Act passed by respondent no.1 creating a demand of tax of Rs. 9,17,666.86/- for the FY 2018-2019.

3. Submissions have been advanced as have already been considered in large number of similar petitions. Primarily, we have considered and dealt with the same in **Writ Tax No. 3964 of 2025 (M/s Riya Construction vs State of U.P. & 3 Ors, Neutral Citation No. - 2025:AHC:179271-DB**, dated 09.10.2025.

4. Facts being similar, writ petition is allowed and the impugned order is set aside, subject to the petitioner depositing Rs. 92,000/- towards the disputed amount (including the amount that may have already been deposited or recovered) within a period of one month from today, with the following directions:

(i) Subject to the above deposit being made by the petitioner, the Adjudicating Authority shall make available to the petitioner copy of the show cause notice together with any additional/supplementary notice etc issued in these proceedings together with copies of Relied Upon Documents ('RUDs' in short) within a period of two weeks from the date of compliance

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shown by the petitioner.

(ii) Petitioner shall file reply, if any, within a further period of four weeks therefrom.

(iii) Thereupon the respondent No.1 shall fix appropriate date for hearing and communicate the same to the petitioner in the manner prescribed by law with at least two weeks' advance notice.

(iv) Petitioner undertakes to cooperate and participate in the proceedings and not seek any undue or long adjournment.

5. It is expected that the proceedings thus remitted would be concluded within six months from the date the petitioner makes first compliance under this order and deposits the amount specified above.

6. The amount so deposited by the petitioner shall remain subject to the final outcome of the adjudication proceedings.

(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)

October 14, 2025
Nadeem

CASE 30 OF 35

Toshniwal Electricals Pvt. Ltd. v. The Principal Commissioner of Central Tax, Delhi North & Ors.

Court	High Court of Delhi
Bench	Prathiba M. Singh and Shail Jain, JJ.
Date	30.10.2025
Case no. / citation	W.P.(C) 16455/2025

Holding in brief

Writ against an Order-in-Original on the ground that RUDs were not supplied. The petitioner knew of the notices and filed a reply, whose only ground was non-supply of RUDs, with no stand on merits. The Court relegated him to the appeal under section 107 and protected the limitation if the appeal is filed by a fixed date with pre-deposit.

Paragraphs highlighted

Paras 13 and 14. Highlighted passages are on compendium pages 423.

Status

Final order; petition disposed of, relegating to appeal.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 414.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 30th October, 2025

\+ **W.P.(C) 16455/2025, CM APPLs.67300-01/2025**

TOSHNIWAL ELECTRICALS PVT LTD THROUGH ITS DIRECTOR MUKUND MAHESHWARI .....Petitioner

Through: Mr. A.K. Babbar and Mr. B.K. Triapthi, Advs. (M:9811115749)

versus

THE PRINCIPAL COMMISISONER OF CENTRAL TAX DELHI NORTH & ORS. .....Respondents

Through: Mr. Shashank Sharma, SSC with Ms. Malika Kumari, Advs. for R-1 & 2.
Ms. Vaishali Gupta, Panel Counsel (Civil), GNCTD for R-3 & 4.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.67300/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 16455/2025 & CM APPL. 67301/2025 (for stay)

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the Order-in-Original dated 28th January, 2025 (hereinafter, *'impugned order'*) passed by the Office of the Principal Commissioner of Central GST, Delhi North. *Vide* the impugned order, a demand to the tune of Rs.9,81,070/- has been raised against the Petitioner.

4. Submission of Mr. A.K. Babbar, ld. Counsel for the Petitioner is that no personal hearing was granted to the Petitioner and hence, there is violation of principles of natural justice.

5. The matter arises out of the fraudulent availment of Input Tax Credit (hereinafter, *'ITC'*) wherein an investigation had been initiated against 16 tax payers, who have transferred substantial amounts of ITC through GSTR filing. The scrutiny revealed, as per the Department, that there was hardly any inward ITC from their declared suppliers. This led to the suspicion that 16 firms did not actually exist. The analysis of the outward supplies as reported in GSTR-1M by the previous 72 non-existent firms and another seven firms revealed that the total amount, which was transferred by these firms, was ITC of more than Rs.122 crores to 1155 taxpayers.

6. The CGST- Delhi, North Commissionerate started the investigation process by giving notices to 1155 recipients, who were associated with 79 fake entities. Some parties paid the amount of approximately Rs.5.24 crores. The Petitioner is at serial number 211 in the impugned order and the liability of the Petitioner is to the tune of Rs.9,81,072/-, as per the impugned order.

7. This Court has consistently taken the view that in cases involving fraudulent availment of ITC, ordinarily, the Court would not be inclined to exercise its writ jurisdiction. It is routinely seen in such cases that there are complex transactions involved which require factual analysis and consideration of voluminous evidence, as also the detailed orders passed after investigation by the Department. In such cases, it would be necessary to consider the burden on the exchequer as also the nature of impact on the GST

regime, and balance the same against the interest of the Petitioners, which is secured by availing the right to statutory appeal.

8. It would be apposite to refer to some of the cases which have been decided by the Supreme Court as also by this Court on these aspects. The Supreme Court in the context of Central Goods and Service Tax Act, 2017, has, in ***Civil Appeal No. 5121/2021*** dated 3rd September, 2021 titled ***'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited'***, has held as under:

> *"11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution.* ***But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.***
>
> *12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no*

observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case"

9. Thereafter, this Court in ***W.P.(C) 5737/2025*** titled ***Mukesh Kumar Garg v. Union of India & Ors.*** dealing with a similar case involving fraudulent availment of ITC had held as under:

"11. The Court has considered the matter under Article 226 of the Constitution of India, which is an exercise of extraordinary writ jurisdiction. The allegations against the Petitioner in the impugned order are extremely serious in nature. They reveal the complex maze of transactions, which are alleged to have been carried out between various non-existent firms for the sake of enabling fraudulent availment of the ITC.

12. The entire concept of Input Tax Credit, as recognized under Section 16 of the CGST Act is for enabling businesses to get input tax on the goods and services which are manufactured/supplied by them in the chain of business transactions. The same is meant as an incentive for businesses who need not pay taxes on the inputs, which have already been taxed at the source itself. The said facility, which was introduced under Section 16 of the CGST Act is a major feature of the GST

regime, which is business friendly and is meant to enable ease of doing business.

13. It is observed by this Court in a large number of writ petitions that this facility under Section 16 of the CGST Act has been misused by various individuals, firms, entities and companies to avail of ITC even when the output tax is not deposited or when the entities or individuals who had to deposit the output tax are themselves found to be not existent. Such misuse, if permitted to continue, would create an enormous dent in the GST regime itself.

14. As is seen in the present case, the Petitioner and his other family members are alleged to have incorporated or floated various firms and businesses only for the purposes of availing ITC without there being any supply of goods or services. The impugned order in question dated 30th January, 2025, which is under challenge, is a detailed order which consists of various facts as per the Department, which resulted in the imposition of demands and penalties. The demands and penalties have been imposed on a large number of firms and individuals, who were connected in the entire maze and not just the Petitioner.

15. The impugned order is an appealable order under Section 107 of the CGST Act. One of the co-noticees, who is also the son of the Petitioner i.e. Mr. Anuj Garg, has already appealed before the Appellate Authority. 16. Insofar as exercise of writ jurisdiction itself is concerned, it is the settled position that this jurisdiction ought not be exercised by the Court to support the unscrupulous litigants.

> *17. Moreover, when such transactions are entered into, a factual analysis would be required to be undertaken and the same cannot be decided in writ jurisdiction. The Court, in exercise of its writ jurisdiction, cannot adjudicate upon or ascertain the factual aspects pertaining to what was the role played by the Petitioner, whether the penalty imposed is justified or not, whether the same requires to be reduced proportionately in terms of the invoices raised by the Petitioner under his firm or whether penalty is liable to be imposed under Section 122(1) and Section 122(3) of the CGST Act.*
>
> *18. The persons, who are involved in such transactions, cannot be allowed to try different remedies before different forums, inasmuch as the same would also result in multiplicity of litigation and could also lead to contradictory findings of different Forums, Tribunals and Courts."*

10. This position was also followed in ***M/s Sheetal and Sons & Ors. v. Union of India & Anr.*, 2025: DHC: 4057-DB.** The relevant portion of the said decision read as under:

> *15. The Supreme Court in the decision in Civil Appeal No 5121 of 2021 titled 'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited' discussed the maintainability of a writ petition under Article226.* ***In the said decision, the Supreme Court reiterated the position that existence of an alternative remedy is not absolute bar to the maintainability of a writ petition, however, a writ petition under Article 226 can only be filed under exceptional circumstances****....*
> *XXXX*
> *16. In view of the fact that the impugned order is an*

appealable order and the principles laid down in the abovementioned decision i.e. ***The Assistant Commissioner of State Tax & Ors. (Supra)****, the Petitioners are relegated to avail of the appellate remedy."*

11. Recently, this Court in ***W.P.(C) 5815/2025***titled ***M/s MHJ Metal Techs v. Central Goods and Services Tax Delhi South*** held as under:

"16. This Court, while deciding the above stated matter, has held that where cases involving fraudulent availment of ITC are concerned, considering the burden on the exchequer and the nature of impact on the GST regime, writ jurisdiction ought not to be exercised in such cases. The relevant portions of the said judgment are set out below:

> *"11. The Court has considered the matter under Article 226 of the Constitution of India, which is an exercise of extraordinary writ jurisdiction. The allegations against the Petitioner in the impugned order are extremely serious in nature. They reveal the complex maze of transactions, which are alleged to have been carried out between various non-existent firms for the sake of enabling fraudulent availment of the ITC.*
> ***12. The entire concept of Input Tax Credit, as recognized under Section 16 of the CGST Act is for enabling businesses to get input tax on the goods and services which are manufactured/supplied by them in the chain of business transactions. The same is meant as an incentive for businesses who need not pay taxes on the inputs, which have already been taxed at the source itself. The said facility, which was introduced under Section 16 of the CGST Act is a***

major feature of the GST regime, which is business friendly and is meant to enable ease of doing business.

13. It is observed by this Court in a large number of writ petitions that this facility under Section 16 of the CGST Act has been misused by various individuals, firms, entities and companies to avail of ITC even when the output tax is not deposited or when the entities or individuals who had to deposit the output tax are themselves found to be not existent. Such misuse, if permitted to continue, would create an enormous dent in the GST regime itself.

14. As is seen in the present case, the Petitioner and his other family members are alleged to have incorporated or floated various firms and businesses only for the purposes of availing ITC without there being any supply of goods or services. The impugned order in question dated 30th January, 2025, which is under challenge, is a detailed order which consists of various facts as per the Department, which resulted in the imposition of demands and penalties. The demands and penalties have been imposed on a large number of firms and individuals, who were connected in the entire maze and not just the Petitioner.

15. The impugned order is an appealable order under Section 107 of the CGST Act. One of the co-noticees, who is also the son of the Petitioner i.e. Mr. Anuj Garg, has already appealed before the Appellate Authority.

16. Insofar as exercise of writ jurisdiction itself is concerned, it is the settled position that this jurisdiction ought not be exercised

by the Court to support the unscrupulous litigants.

17. Moreover, when such transactions are entered into, a factual analysis would be required to be undertaken and the same cannot be decided in writ jurisdiction. The Court, in exercise of its writ jurisdiction, cannot adjudicate upon or ascertain the factual aspects pertaining to what was the role played by the Petitioner, whether the penalty imposed is justified or not, whether the same requires to be reduced proportionately in terms of the invoices raised by the Petitioner under his firm or whether penalty is liable to be imposed under Section 122(1) and Section 122(3) of the CGST Act.

18. The persons, who are involved in such transactions, cannot be allowed to try different remedies before different forums, inasmuch as the same would also result in multiplicity of litigation and could also lead to contradictory findings of different Forums, Tribunals and Courts."

17. Under these circumstances, this Court is not inclined to entertain the present writ petition. However, the Petitioners are granted the liberty to file an appeal.

18. Accordingly, the Petitioners are permitted to avail of the appellate remedy under Section 107 of the CGST Act, by 15th July, 2025, along with the necessary pre-deposit mandated, in which case the appeal shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

19. Needless to add, any observations made by this Court would not have any impact on the final adjudication by the appellate authority."

12. The decision in ***Metal Techs (supra)*** has also been carried to the Supreme Court in ***SLP(C) 27411/2025*** titled ***M/S Metal Techs v. Central Goods and Services Tax Delhi South***. In the said *SLP*, the Supreme Court *vide* order dated 22nd September, 2025 has merely extended the time for filing the appeal.

13. Under these circumstances, the Court is not inclined to entertain the present writ petition. The Petitioner was well aware of several notices, which were issued and the reply was duly filed by the Petitioner. Even in reply, the only ground taken is that the RUDs have not been supplied and there is no stand taken by the Petitioner on merits.

14. Accordingly, the Court is inclined to relegate the Petitioner to avail of appellate remedy under Section 107 of the Central Goods and Service Tax Act, 2017. The appeal may be filed by the Petitioner by 30th November, 2025 along with the requisite pre-deposit. If the same is filed by the said date, the appeal shall be entertained on merits and shall not be dismissed being barred by limitation.

15. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 30, 2025/*dk/ck*

CASE 31 OF 35

M/s Priti Builders v. Deputy Commissioner of State Tax, Bally and Salkia Charge & Ors.

Court	High Court of Calcutta
Bench	Om Narayan Rai, J.
Date	03.02.2026
Case no. / citation	WPA 7574 of 2025

Holding in brief

A section 74 order was passed without returning the seized documents and CPU needed for the defence. The petitioner had no meaningful opportunity of hearing or to prepare an appeal. The order was treated as an additional show cause notice, to be answered after the seized material is handed over.

Paragraphs highlighted

Paras 13 (part), 14 and 17. Highlighted passages are on compendium pages 428-430.

Status

Final order; writ petition disposed of with directions.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 425.

Item No.
SL.12.
SD
3.2.26

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side.

WPA 7574 of 2025

M/s. Priti Builders
Vs.
Deputy Commissioner of State Tax, Bally and Salkia Charge & Ors.

Mr. Debasish Ghosh
Mr. Tanmay Hazra ..... For the Petitioner.

Ms. Tanmoy Chakraborty
Mr. Saptak Sanyal .... For the State.

1. This writ petition assails, inter alia, an order dated December 18, 2024 passed under Section 74 of the WBGST Act, 2017/CGST Act, 2017(hereafter "the said Act of 2017").

2. It is the petitioner's case that a search and seizure operation had been conducted at the petitioner's principal place of business on January 25, 2024 during which certain documents and books of accounts as well as the CPU of the petitioners' computer were seized. Thereafter, an intimation under Section 74(5) of the said Act of 2017, as regards short payment of tax on outward supply on the ground of suppression was served upon the petitioner on March 18, 2024. The petitioner replied thereto on April 9, 2024, thereby, inter alia, requesting the respondent GST Authorities to supply a copy of the seized records as also to return

the CPU so as to enable the petitioner to participate in the adjudication proceedings in an informed manner.

3. It is the petitioner's case that the petitioner was neither provided the copy of the seized documents nor was the CPU returned to the petitioner. Subsequently, a notice under Section 74(1) of the said Act, of 2017 was issued calling upon the petitioner to show cause as to why the petitioner shall not be held liable for payment of tax on account of suppression.
4. Subsequently, a notice for personal hearing was issued to the petitioner. But the petitioner did not appear before the authorities on the said date.
5. However, the petitioner replied to the notice to show cause on August 6, 2024 thereby once again reiterating that the copies of the seized documents and the CPU may be returned to it. Ultimately, the order impugned was passed confirming the demand raised against the petitioner in the notice to show cause without affording any further opportunity of hearing to the petitioner upon receipt of the petitioner's reply dated August 6, 2024 to the notice to show cause.
6. It is the petitioners case that neither the copies of the seized documents were made available to the

petitioner nor was the CPU returned to it and as such the petitioner could neither properly participate in the adjudication proceeding not file a proper appeal. Hence the writ petition.

7. Mr. Ghosh, learned Advocate appearing for the petitioner submits that despite repeated requests, the respondent GST Authorities did not furnish copies of the seized copies to the petitioner. The CPU of the petitioner that had been seized was also not supplied to the petitioner. That being the situation, the petitioner was unable to frame its defence appropriately and to meaningfully participate in the adjudication proceedings. It is submitted that not having done so the respondent authorities have acted in breach of the principles of natural justice.

8. A report in the form of an affidavit has been filed by the respondents.

9. Mr. Chakraborty, learned Advocate appearing for the respondent CGST Authorities submits that the petitioner had been afforded an opportunity of hearing but the petitioner chose not to appear. He has also drawn attention of this court to a letter dated January 6, 2026 issued by the Dy. Commissioner of Revenue, WBGST (which is annexed to the Report) whereby the petitioner has

been instructed to file a petition before the proper officer and to appear in person or through any authorized representative to collect the seized documents in original and the seized CPU from the proper officer.

10. It is further submitted that the petitioner had in course of the adjudication proceedings, been given opportunity to access the CPU and the documents along with his authorized representatives.

11. Heard the learned Advocates appearing for the respective parties and considered the material on record.

12. It is not in dispute that the documents and the CPU that had been seized from the custody of the petitioner have not yet been returned to the petitioner.

13. In such view of the matter, the petitioner has been deprived of a fair opportunity to contest the adjudication proceedings inasmuch as the documents based on which the petitioner could have prepared the defence were not available to the petitioner. It is also clear that the petitioner has not got any meaningful opportunity of personal hearing.

14. There is sufficient force in the contention of the petitioner that without the documents and

records the petitioner would also not be in a position to prefer a proper appeal before the appellate authority.

15. In such view of the matter, and for the ends of justice, the order impugned dated December 18, 2024 passed by the proper officer under Section 74 of the said Act of 2017 should not be allowed to be given effect to.

16. Since, the petitioner has not got any meaningful opportunity of participating in the hearing before the proper officer, the order impugned shall be treated as an additional show cause notice. The petitioner shall not be entitled to file a composite reply to the show cause notice earlier issued to the petitioner as well as the additional show cause notice (i.e. the impugned order dated 18th December, 2024 in terms of this order) within a period of two weeks from the date when the petitioner receives the seized documents or copies thereof and the seized CPU.

17. The petitioner shall approach the proper officer by way of an appropriate application as indicated in the notice dated January 6, 2026 (Annexure R/10 at page 37) of the report in the form of an affidavit within a week from date. Upon the petitioner so approaching the proper officer

shall makeover the seized documents (or copies thereof) and the seized CPU to the petitioner within two days thereafter. The proper officer shall thereafter conclude the proceedings by passing appropriate orders upon affording an opportunity of hearing to the petitioner, in accordance with law. It is clarified that this court has not gone into the merits of the matter and all points are left open to the adjudicating authority.

18. The writ petition being WPA 7574 of 2025 stands disposed of with the above observations.

19. There will be no order as to costs.

20. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)

CASE 32 OF 35

Singhvi Trandelink LLP & Anr. v. State of Gujarat & Anr.

Court	High Court of Gujarat
Bench	A.S. Supehia and Pranav Trivedi, JJ.
Date	05.03.2026
Case no. / citation	2026:GUJHC:16945-DB; Special Civil Application No. 2392 of 2026

Holding in brief

The relied-upon documents were supplied only during the inquiry and not with the show cause notice, and cross-examination of the witnesses whose statements were relied on was refused; the Department's own officer conceded the explanation was not in line with settled law. On these two grounds the order was quashed and the matter remanded to the stage of the notice, with all RUDs and their list to be supplied and cross-examination allowed on request.

Paragraphs highlighted

Paras 3 to 5 and 7. Highlighted passages are on compendium pages 433-434.

Status

Final oral order; writ petition allowed, order quashed and matter remanded; the show cause notice not set aside.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 432.

NEUTRAL CITATION
2026:GUJHC:16945-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2392 of 2026

==========

SINGHVI TRANDELINK LLP & ANR.

Versus

STATE OF GUJARAT & ANR.

==========

Appearance:
MR MIHIR JOSHI, SENIOR ADVOCATE WITH
MR AMAL PARESH DAVE, MR PARESH M DAVE, DHAVAL K SHAH AND PARTH RACHH, ADVOCATES for the Petitioner(s) No. 1,2
MR HARSHVARDHAN SHARMA, AGP for the Respondent(s) No. 1,2

==========

CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 05/03/2026

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. ***Rule***. Learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents.

2. Pursuant to the order dated 24.02.2026, learned Senior Standing Counsel Mr.Utkarsh Sharma, assisted by learned AGP Mr.Harshvardhan Sharma has submitted that an affidavit dated 02.03.2026 has been filed before this Court pointing out all the relevant details. He has referred to the documentary evidence mentioned in the said affidavit and has further submitted that the issue with regard to the non-cross-examination of the witnesses has also been explained therein. On instructions received from the officer- Mr.Ronak Thoriya, Assistatnt Commissioner (SGST), who is present before this Court, it is submitted that the explanation given in the affidavit relating to non-cross-examination of the witnesses, though explained by

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Compendium: RUDs and natural justice | page 432 of 465 Back to Index

NEUTRAL CITATION
2026:GUJHC:16945-DB

the deponent, does not appear to be in consonance with the settled position of law and that an appropriate opportunity was required to be extended to the petitioners to cross-examine the relevant witnesses, as demanded. Apropos non-supplying of the documents, mentioned in the affidavit-in-reply, it is contended that the same are supplied during the course of inquiry and not along with the show cause notice.

3. Under the circumstances, since we find that the documents on which reliance has been placed during the investigation / inquiry were supplied to the petitioners subsequently and not along with the show cause notice, the same would amount to violation of the principles of natural justice. The second aspect pertains to the refusal to extend the opportunity of cross-examination, as demanded by the petitioners, of those witnesses whose statements have been relied upon by the department. Such inaction also violates the fundamental principle of fair opportunity of hearing.

4. Thus, only on these two short grounds, the impugned order deserves to be quashed and set aside. The matter is remanded to the respondent authority for a fresh inquiry / investigation from the stage of issuance of the show cause notice.

5. We direct that all the documents on which reliance is placed by the respondents shall be supplied to the petitioner along with the list of Relied Upon Documents (RUDs). In the event, the petitioner requests cross-examination of any witnesses whose statements are relied upon by the

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Compendium: RUDs and natural justice | page 433 of 465 Back to Index

NEUTRAL CITATION
2026:GUJHC:16945-DB

department, such opportunity shall be extended and appropriate orders shall be passed in accordance with law. The inquiry shall be completed within a period of three months.

6. We further direct that the petitioners shall fully cooperate with the investigation / inquiry.

7. It is clarified that we are not setting aside the show cause notice and the inquiry shall proceed thereafter, after the RUDs are supplied to the petitioners.

8. With these observations, the present writ petition stands allowed. The matter is remanded back to the respondent authority accordingly. Rule is made absolute to the aforesaid extent.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(PRANAV TRIVEDI,J)

MAHESH/08

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Compendium: RUDs and natural justice | page 434 of 465 Back to Index

CASE 33 OF 35

M/s Sai Auto Mobiles v. Commissioner, Central Goods Service Tax and Central Excise & 2 Others

Court	High Court of Allahabad
Bench	Saumitra Dayal Singh and Vivek Saran, JJ.
Date	29.05.2026
Case no. / citation	Writ Tax No. 2698 of 2026

Holding in brief

A section 74 order was passed without giving the RUDs despite a specific application. The order was set aside; fresh notice with RUDs and a list of non-RUDs, reasons if any document is declined, and statements relied on to be supplied. Where adverse statements are relied on, cross-examination, if prayed for, should normally be allowed.

Paragraphs highlighted

Para 8, directions (i) to (vii). Highlighted passages are on compendium pages 437-438.

Status

Final order; matter remitted to the adjudicating authority.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 436.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 2698 of 2026

M/S Sai Auto Mobiles

.....Petitioner(s)

Versus

Commissioner Central Goods Service Tax And Central Excise And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Astha Misra, Avneesh Tripathi
Counsel for Respondent(s)	:	Dhananjay Awasthi

Court No. - 39

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE VIVEK SARAN, J.

1. Heard Sri Avneesh Tripathi, learned counsel for the petitioner and Sri Dhananjay Awasthi, learned counsel for the respondents.

2. Challenge has been raised to the order dated 24.03.2026 passed by the respondent no. 2 under Section 74 of the CGST ACt, 2017. Grievance is that the adjudicating authority has erred in passing the impugned order without first providing the petitioner copies of RUDs. Though, specific application had been made in that regard on 16.01.2026, neither that application has been rejected nor copy of RUDs was supplied.

3. Second, it has been urged that there was certain double entries in the accounts of the petitioner. The petitioner has explained the same through its reply. However, that issue has not been considered.

4. On the other hand, learned counsel for the revenue has raised preliminary objection as to the availability of statutory remedy of appeal.

5. Considering the nature of grievance, we required the learned counsel for the revenue to obtain instructions. Today, no satisfactory instruction has been received.

6. In view of above, we note that unless copies of RUDs are first made available to the noticee, his reply to the show cause notice may remain incomplete and his right to object to the proposed demand may remain

impaired. Once the demand is proposed on the strength of RUDs, unless exceptional circumstance exists, supply of copies of such RUDs may remain mandatory on the revenue, before the proposed demand is confirmed.

7. To the extent, no satisfactory instruction has been received by the learned counsel for the revenue to establish that the copies of RUDs have been made available to the petitioner and in face of specific pleadings made in that regard, it has to be inferred, at this stage, the petitioner was not made available copies of the RUDs before the demand was confirmed.

8. Accordingly, the writ petition is **disposed of** with the following directions:

(i) The impugned order dated 24.03.2026 is set aside and the matter is remitted to the adjudicating authority to pass a fresh order.

(ii) For that purpose, the Adjudicating Authority may issue to the petitioner, a fresh copy of the original Show-Cause notice together with copies of RUDs and a list of non-RUDs. That compliance may be made within a period of two weeks from today.

(iii) Upon receipt of such communication, the petitioner may apply to the Adjudicating Authority - to be supplied any other document including copies of non-RUDs, within a further period of one week therefrom.

(iv) Subject to such compliance, the application moved by the petitioner may be considered by the Adjudicating Authority within a further period of one week. Copies of all other documents to be supplied to the petitioner may be made available within that time. If copy of any document or non-RUD, is to be declined, adequate reasons may be communicated to the petitioner, within that time.

(v) Thereafter, the Adjudicating Authority may fix appropriate date in the proceeding with at least 15 days advance notice. The petitioner undertakes to cooperate in the proceedings and not seek any undue or long adjournment.

(vi) At that stage, if the revenue seeks to rely on statement of any person, recorded during investigation etc., the same would necessarily be made

available to the petitioner on the date fixed in the proceedings. On that date itself, the petitioner may apply for opportunity to cross-examine any witness being relied by the revenue.

(vii) Wherever the revenue seeks to rely on adverse statement made against the petitioner, normally opportunity of cross-examination, if prayed for, may be allowed to the petitioner. If such opportunity is to be declined, adequate reasons for the same may be communicated to the petitioner within a week of its application.

(viii) Accordingly, the proceedings may continue such that the same may be concluded within a period of six months from today, after affording due opportunity of personal hearing to the petitioner.

(Vivek Saran,J.) (Saumitra Dayal Singh,J.)

May 29, 2026
gp

CASE 34 OF 35

A V International & Anr. v. Additional Director General, DRI & Ors.

Court	High Court of Delhi
Bench	Anil Kshetarpal and Shail Jain, JJ.
Date	07.08.2026
Case no. / citation	W.P.(C) 16149/2023 (with W.P.(C) 5024/2024)

Holding in brief

Limitation under section 28 of the Customs Act, the Call Book and non-supply of RUDs were raised against a pending adjudication. The Court did not interfere under Article 226, gave liberty to appeal to CESTAT, and directed an effective hearing before any final order. All contentions, including non-supply of RUDs, were kept open.

Paragraphs highlighted

Paras 38, 43 and 44. Highlighted passages are on compendium pages 454-455.

Status

Final order; petitions disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 440.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 27.07.2026***
Judgment pronounced on: 07.08.2026
Judgment uploaded on: 07.08.2026

\# **CNR No. DLHC010524762023**

\+ W.P.(C) 16149/2023

A V INTERNATIONAL & ANR. .....Petitioners

Through: Mr. Prem Ranjan Kumar, Adv.

versus

ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF REVENUE INTELLIGENCE & ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, and Mr. Aditya Chaudhary, Advs. for R-1.
Mr. Amit Gupta, SPC with Mr. Vidur Dwivedi, Adv. for UOI.
Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh, and Mr. Hasan Haider, Advs. for R-2-4.

\# **CNR No. DLHC010181002024**

\+ W.P.(C) 5024/2024 and CM APPL. 20542/2024

A V INTERNATIONAL & ANR. .....Petitioners

Through: Mr. Prem Ranjan Kumar, Adv.

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, and Mr. Aditya Chaudhary, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Writ Petitions, filed under Article 226 of the Constitution of India, arise out of a common investigation conducted by the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') and involve interconnected questions of fact and law. While W.P.(C.) No.16149/2023 challenges the continuation of adjudication proceedings pursuant to Show Cause Notice No.16/2020 dated 11.05.2020 (hereinafter referred to as 'Second SCN'), the connected Writ Petition, W.P.(C) No.5024/2024, assails the Order-in-Original dated 01.02.2024 (hereinafter referred to as 'Impugned Order') passed in respect of Show Cause Notice No.11/2017 dated 27.03.2017 (hereinafter referred to as 'First SCN'). Since both matters emanate from the same investigation and involve overlapping issues, they were heard together and are being disposed of by this common judgment.

2. The dispute traces its origin to an investigation initiated by the DRI in the year 2016 in relation to the Petitioners' imports. The investigation led to the issuance of the First SCN in 2017 and, subsequently, the Second SCN in 2020. The First SCN pertained to the goods seized during the course of investigation, whereas the Second SCN related to the Petitioners' earlier imports and proposed recovery of customs duty, interest and penalty under the Customs Act, 1962 (hereinafter referred to as 'the Act'). Both SCNs were thereafter assigned to the same adjudicating authority and taken up together for adjudication.

3. The Petitioners, by way of the present Writ Petitions, challenge the continuation of adjudication proceedings pursuant to the Second SCN, the Impugned Order passed in respect of the First SCN, and the legality of the impugned proceedings on various grounds, including the alleged violation of the principles of natural justice.

FACTUAL MATRIX:

4. The facts giving rise to the present Writ Petitions are, briefly, as follows.

5. The Petitioners are engaged in the business of importing and trading signage materials, principally from China and Taiwan. In the year 2016, the DRI initiated an investigation on allegations of mis-declaration of imported goods and undervaluation thereof. During the course of investigation, searches were conducted at the residential and business premises of the Petitioners, certain goods were seized, statements of various persons were recorded and the seized goods were thereafter provisionally released upon the Petitioners furnishing the requisite bond and bank guarantee.

6. Upon completion of the investigation, the DRI issued two SCNs. The First SCN was issued in 2017, which pertained to the goods seized during the search and proposed confiscation of the goods together with consequential penalties, and thereafter, after a gap of three (03) years, the Second SCN was issued, which pertained to the Petitioners' earlier imports and proposed recovery of customs duty along with interest and penalty under Section 28 of the Act.

7. On 13.10.2020, the Principal Commissioner of Customs (Import), ICD, Tughlakabad, was appointed as the common

adjudicating authority in respect of both SCNs. Thereafter, common notices of personal hearing came to be issued and the proceedings in both matters were taken up together. According to the Petitioners, during the course of adjudication they repeatedly sought supply of the relied upon documents and also requested adjournments on account of the serious medical condition of the proprietor of Petitioner No.1 and the prevailing COVID-19 pandemic. It is their case that certain relied upon documents were not furnished despite repeated requests.

8. It is also the Petitioners' case that, following the decision of the Supreme Court in ***Canon India Pvt. Ltd. v. Commissioner of Customs***[1], the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'CBIC') issued an Instruction dated 17.03.2021 directing that such matters be transferred to the Call Book. Consequently, according to the Petitioners, adjudication proceedings in respect of both SCNs remained pending for some time before being resumed.

9. The Respondents, on the other hand, contend that the adjudication proceedings were conducted strictly in accordance with the statutory framework. It is their case that the Petitioners were afforded several opportunities of personal hearing but repeatedly sought adjournments and failed to participate in the proceedings. The Respondents further assert that, pursuant to the matter being withdrawn from the Call Book following the amendments introduced by the Finance Act, 2022, the period available for adjudication recommenced in terms of Section 28(9A) of the Act and, in view of the volume of matters restored for adjudication, the competent

[1] 2021 (376) ELT 3 (SC)

authority granted an extension of time on 06.03.2023 for completion of the adjudication proceedings.

10. As no adjudication order had been passed in respect of Second SCN, the Petitioners instituted W.P.(C.) No.16149/2023 before this Court, raising various challenges to the continuation of adjudication proceedings, including those founded on Section 28(9) of the Customs Act. By order dated 14.12.2023, notice was issued in the said Writ Petition and further proceedings pursuant to Second SCN were stayed.

11. Thereafter, notwithstanding the pendency of W.P.(C.) No.16149/2023 and the interim order staying proceedings in Second SCN passed therein, the Adjudicating Authority proceeded to adjudicate the First SCN and passed the Impugned Order. Aggrieved thereby, the Petitioners instituted the W.P.(C) No.5024/2024, contending that, since both SCNs emanated from the same investigation and were being adjudicated together by the same authority, the Respondents could not have proceeded with adjudication of the First SCN while proceedings pursuant to the Second SCN remained stayed. The Petitioners have also assailed the Impugned Order on independent grounds, including alleged violation of the principles of natural justice and non-supply of relied upon documents.

CONTENTIONS OF THE PARTIES:

12. Heard learned Senior Standing Counsel and learned Counsel representing the parties at length and with their able assistance, perused the paperbook.

13. Learned Counsel representing the Petitioners has made the following submissions:

i. Both the First SCN and the Second SCN emanate from the same investigation conducted by the DRI, involve substantially common allegations, were assigned to the same Adjudicating Authority and were being heard together. Once this Court had stayed further proceedings pursuant to the Second SCN by order dated 14.12.2023, the Respondents could not have proceeded to adjudicate the First SCN in isolation by passing the Impugned Order dated 01.02.2024.

ii. The adjudication proceedings suffer from gross violation of the principles of natural justice. Despite repeated requests, the relied upon documents were not furnished to the Petitioners, thereby depriving them of an effective opportunity to defend themselves. Further, several adjournments became necessary on account of the serious medical condition of the proprietor of Petitioner No.1 and the prevailing COVID-19 pandemic, which circumstances were not duly considered by the Adjudicating Authority.

iii. Insofar as W.P.(C.) No.16149/2023 is concerned, the continuation of adjudication proceedings pursuant to the Second SCN is barred by Section 28(9) of the Act. The statutory period prescribed for adjudication had expired and the subsequent extension granted by the competent authority was neither valid in law nor communicated to the Petitioners. Further, the failure to

communicate the extension order vitiates the continuation of the proceedings.

iv. The Respondents cannot derive any benefit from placing the matter in the Call Book pursuant to the CBIC Instruction dated 17.03.2021. The statutory timelines prescribed under Section 28 of the Act cannot be defeated by executive instructions and that the proceedings had become time-barred even otherwise.

v. The Respondents themselves had treated both SCNs as constituting one composite adjudication by appointing a common Adjudicating Authority and issuing common notices of hearing. Having adopted such a course, it was not open to the Respondents to segregate the proceedings after the stay granted by this Court and adjudicate only one of the SCNs.

14. *Per contra*, Learned Senior Standing Counsel representing the Respondents, whose submissions were substantially on similar lines, contended as under:

i. Both Writ Petitions are misconceived and deserve to be dismissed. The adjudication proceedings have been conducted strictly in accordance with the statutory framework and that the Petitioners themselves are responsible for the delay in conclusion of the proceedings.

ii. Multiple opportunities of personal hearing were granted to the Petitioners on different dates, however, the Petitioners repeatedly sought adjournments and failed to participate in the

proceedings. The Petitioners have approached this Court without disclosing their own conduct and, therefore, are not entitled to any equitable relief in exercise of writ jurisdiction.

iii. The challenge founded upon Section 28(9) of the Act is misconceived. After the matters were transferred to the Call Book pursuant to the CBIC Instruction dated 17.03.2021 and subsequently withdrawn therefrom following the amendments introduced by the Finance Act, 2022, a fresh period for adjudication became available under Section 28(9A) of the Act. The competent authority validly extended the period for adjudication on 06.03.2023 and, therefore, the proceedings pursuant to the Second SCN remained well within the prescribed statutory period.

iv. There is no statutory requirement under Section 28(9) of the Act mandating communication of the order extending the period of adjudication to the noticee. Reliance was placed upon the decision of this Court in ***Pranij Heights India Pvt. Ltd. v. Joint Commissioner of Customs***[2], wherein it was held that mere non-communication of the extension order does not invalidate either the SCN or the adjudication proceedings. Reliance was also placed upon the decision of the Punjab and Haryana High Court in ***Shri Ram Agro Chemicals Pvt. Ltd. v. Union of India & Ors.***[3], which has been followed by this Court.

v. The Petitioners' reliance upon the pending proceedings before the Supreme Court in ***Union of India & Ors. v. GMR***

[2] 2025:DHC:11343-DB
[3] 2019 SCC OnLine P&H 4918

Airport Infrastructure Ltd.[4] and the judgment in ***Vos Technologies India Pvt. Ltd. v. The Principal Additional Director General & Anr.***[5] is wholly misplaced. These matters relate to the statutory framework existing prior to the amendments introduced by the Finance Act, 2018, whereas the present proceedings are governed by the amended provisions of Section 28 and consequently stand on an entirely different footing.

vi. Insofar as the challenge to the Impugned Order dated 01.02.2024 is concerned, the interim order passed by this Court on 14.12.2023 was confined only to further proceedings pursuant to the Second SCN and did not operate as a restraint upon adjudication of the First SCN. The two SCNs are distinct proceedings, notwithstanding that they originated from the same investigation, and there existed no legal impediment to the Adjudicating Authority proceeding with the First SCN.

15. No other submissions were advanced on behalf of the learned Senior Standing Counsel and learned Counsel representing the parties.

ANALYSIS AND FINDINGS:

16. The controversy before this Court arises in somewhat peculiar circumstances. Both the First SCN and the Second SCN admittedly emanate from the same investigation undertaken by the DRI. Both were assigned to the same Adjudicating Authority. They were also taken up together for adjudication.

[4] Special Leave Petition (Civil) No.5392/2025
[5] 2024:DHC:9493:DB

17. It is not in dispute that the two SCNs were issued on different dates. They relate to different subject matters. The First SCN concerns the goods seized during the course of investigation and proposes confiscation and consequential penalties. The Second SCN concerns earlier imports and proposes recovery of customs duty, interest and penalty under Section 28 of the Act. Each SCN, therefore, has an independent statutory foundation and gives rise to a separate adjudicatory proceeding.

18. Merely because both SCNs originate from the same investigation, or because they were entrusted to a common Adjudicating Authority and heard together for administrative convenience, they do not lose their separate legal identity. No provision of the Act has been brought to our notice which mandates that such notices must necessarily culminate in one composite order or that adjudication of one cannot proceed independently of the other.

19. Adverting to the principal submission urged on behalf of the Petitioners in W.P.(C.) No.5024/2024. It was argued that once this Court stayed further proceedings pursuant to the Second SCN by order dated 14.12.2023, the Respondents were precluded from proceeding with adjudication of the First SCN.

20. This Court is unable to accept the aforesaid submission. A plain reading of the interim order dated 14.12.2023 shows that the stay granted by this Court was confined to further proceedings pursuant to the Second SCN. The order neither stayed the adjudication of the First SCN nor restrained the Adjudicating Authority from proceeding in

respect thereof. An interim order has to be construed on its own terms. It is not permissible to enlarge its scope by implication.

21. In the absence of any express restraint operating against the adjudication of the First SCN, the mere pendency of W.P.(C.) No.16149/2023 could not, by itself, prohibit the Adjudicating Authority from proceeding with the First SCN.

22. Learned counsel representing the Petitioners also submitted that the Respondents themselves had treated both SCNs as constituting one composite adjudication and therefore could not subsequently segregate the proceedings.

23. This Court is unable to agree. Administrative convenience in conducting a common hearing cannot override the statutory character of two independent proceedings. The appointment of a common Adjudicating Authority or issuance of common notices of hearing cannot create a legal bar against separate adjudication if otherwise permissible under the statute.

24. The Petitioners have also assailed the Impugned Order on the ground that the relied upon documents were not supplied despite repeated requests and that adequate opportunity of hearing was denied, particularly in view of the medical condition of the proprietor of Petitioner No.1 and the prevailing COVID-19 pandemic.

25. The Respondents, however, dispute these assertions. According to them, several opportunities of personal hearing were granted over a considerable period and the Petitioners repeatedly sought adjournments without participating in the proceedings.

26. These rival assertions raise disputed questions relating to the conduct of the adjudication proceedings. Whether all relied upon documents were supplied, whether sufficient opportunity was granted, whether the adjournments sought were justified and whether any prejudice was occasioned thereby are matters which necessarily require examination of the adjudication record.

27. Such questions are ordinarily examined by the statutory appellate authority while considering the validity of the adjudication order. They are not issues which persuade this Court to bypass the statutory appellate mechanism provided under the Act.

28. This Court is equally unable to accept the submission that the Impugned Order should be set aside solely because it was passed after the interim order dated 14.12.2023. As noticed hereinabove, the interim protection granted by this Court did not extend to the First SCN.

29. Once the Impugned Order has been passed, the Act provides a complete appellate mechanism against such order before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). CESTAT is competent to examine every contention available to the Petitioners, including those relating to violation of the principles of natural justice, non-supply of relied upon documents, appreciation of evidence and legality of the findings recorded by the Adjudicating Authority.

30. It is well settled that where an effective and efficacious statutory remedy is available, the writ jurisdiction under Article 226 of the Constitution is ordinarily not exercised unless exceptional circumstances are made out. No such exceptional circumstance has

been demonstrated in the facts of the present case insofar as the challenge to the Impugned Order is concerned.

31. In view of the aforesaid discussion, this Court finds no ground to entertain the challenge to the Impugned Order in exercise of our extraordinary writ jurisdiction under Article 226 of the Constitution. The grievances urged by the Petitioners, whether relating to the legality of the adjudication, the alleged violation of the principles of natural justice, non-supply of relied upon documents, or the findings recorded in the Impugned Order, are all matters which can appropriately be examined by the CESTAT in exercise of its appellate jurisdiction. This Court, therefore, declines to interfere with the Impugned Order in writ proceedings and leave it open to the Petitioners to avail the statutory remedy available under the Act.

32. This Court now turns to the issues raised in W.P.(C.) No.16149/2023.

33. The principal challenge therein is founded upon Section 28(9) of the Act. According to the Petitioners, the proceedings pursuant to the Second SCN have become time-barred. It is their contention that the statutory period for adjudication expired and the matter could not validly be kept pending in the Call Book. It is also argued that the extension dated 06.03.2023 is contrary to law and that, in any event, such extension having never been communicated to them cannot sustain the proceedings.

34. The Respondents controvert each of these submissions. According to them, the proceedings were validly transferred to the Call Book pursuant to the CBIC Instruction dated 17.03.2021. After

the Finance Act, 2022, and the consequential notification, the proceedings were withdrawn from the Call Book. Thereafter, the period available for adjudication recommenced under Section 28(9A) of the Act. Since a large number of matters stood revived simultaneously, the competent authority validly granted extension on 06.03.2023. It is further submitted that there exists no statutory requirement requiring communication of such extension to the noticee.

35. The Respondents have also relied upon the decision of this Court in ***Pranij Heights India*** *(supra)* as well as the decision of the Punjab and Haryana High Court in ***Shri Ram Agro Chemicals*** *(supra)* in support of the proposition that non-communication of the extension order does not invalidate the proceedings. The Petitioners, on the other hand, have relied upon the pendency of proceedings before the Supreme Court in ***GMR Airport Infrastructure*** *(supra)* and other connected matters.

36. In the considered opinion of this Court, it would not be appropriate to render any conclusive finding on the aforesaid questions in the present proceedings. This Court, therefore, refrains from expressing any opinion on the merits of the rival contentions advanced in relation to the Second SCN.

37. The issues raised by the Petitioners involve the interpretation of the amended provisions of Section 28 of the Act, the scope and effect of Section 28(9A), the legal consequences of transfer of matters to and withdrawal from the Call Book, the validity of the extension granted by the competent authority on 06.03.2023, and the effect, if any, of

non-communication of such extension. These questions arise directly in the adjudication proceedings pursuant to the Second SCN and are yet to be examined by the Adjudicating Authority.

38. Since the adjudication proceedings pursuant to the Second SCN are yet to attain finality, any observation made by this Court on the aforesaid issues may have a bearing on the decision to be rendered by the Adjudicating Authority. This Court is, therefore, of the view that it would be appropriate to permit the statutory proceedings to reach their logical conclusion, leaving it open to the Petitioners to avail of such remedies as may be available to them in law against the final adjudication order, if occasion so arises.

39. This Court accordingly expresses no opinion on the merits of the rival submissions concerning Section 28 of the Act, the Call Book mechanism, the extension dated 06.03.2023, the requirement of communication thereof, or the applicability of the decisions relied upon by the respective parties. All questions of fact and law are kept open to be urged before the appropriate forum in accordance with law.

CONCLUSION:

40. For the reasons aforesaid, W.P.(C) No.5024/2024 is disposed of without interference with the Impugned Order dated 01.02.2024 in exercise of the writ jurisdiction under Article 226 of the Constitution of India. The Petitioners are, however, granted liberty to avail the statutory remedy of appeal before the CESTAT against the Impugned Order, if so advised.

41. In the event such an appeal is preferred, it shall be open to the Petitioners to urge all grounds available to them in law, including those urged before this Court. It is expected that, if any application for condonation of delay or for interim relief is filed, the same shall be considered by the learned Tribunal on its own merits and in accordance with law.

42. W.P.(C.) No. 16149/2023 is also disposed of. Consequently, the interim order dated 14.12.2023 stands vacated and the Respondents shall be at liberty to proceed with the adjudication of Show Cause Notice No.16/2020 dated 11.05.2020 in accordance with law.

43. Before passing any final order pursuant to Show Cause Notice No.16/2020 dated 11.05.2020, the Adjudicating Authority shall afford the Petitioners an effective opportunity of hearing and shall ensure due compliance with the principles of natural justice in accordance with law.

44. It is clarified that all contentions of the parties on merits, including those relating to limitation under Section 28 of the Customs Act, 1962, the effect of placing the matter in the Call Book, the extension granted under Section 28(9), the alleged non-supply of relie -upon documents and all other questions arising in the adjudication proceedings, are expressly kept open. The Adjudicating Authority shall consider the same independently and in accordance with law, uninfluenced by any observations contained in the present judgment.

45. It is further clarified that the observations made in the present judgment are confined to the question of exercise of writ jurisdiction and shall not be construed as an expression on the merits of the

controversy pending either before the Adjudicating Authority or, if occasion so arises, before the CESTAT.

46. The pending application shall stand closed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

AUGUST 07, 2026
s.godara/shah

CASE 35 OF 35

M/s Shivani Enterprise (Prop. Vibhor Shivkumar Vaid) v. Union of India & Ors. (High Court order sustained by the Supreme Court)

Court	Supreme Court of India (order of 17.08.2026) and High Court of Gujarat (order of 18.06.2026)
Bench	J.B. Pardiwala and K. Vinod Chandran, JJ. (SC); A.S. Supehia and Vaibhavi D. Nanavati, JJ. (HC)
Date	17.08.2026
Case no. / citation	SLP (C) No. 27455/2026; 2026:GUJHC:37527-DB, Special Civil Application No. 1251 of 2026

Holding in brief

Challenge to a show cause notice and Order-in-Original on the ground that the list of RUDs mentioned the wrong year. The High Court found a typographical error, the petitioner having the RUDs of the correct period and having taken part in the proceedings, found no breach of natural justice and left him to the appeal. The Supreme Court declined to interfere, noting the alternative remedy of a statutory appeal under section 107 CGST Act, gave four weeks to appeal and kept all submissions, including deficiencies in the show cause notice, open.

Paragraphs highlighted

SC paras 1 and 2; HC para 8 and the concluding paragraph. Highlighted passages are on compendium pages 458-459, 464-465.

Status

Final; High Court writ petition rejected and special leave petition disposed of.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 458.

ITEM NO.17 COURT NO.6 SECTION III-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.27455/2026

[Arising out of impugned final judgment and order dated 18-06-2026 in SCA No. 1251/2026 passed by the High Court of Gujarat at Ahmedabad]

M/S SHIVANI ENTERPRISE Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

FOR ADMISSION
IA No. 233431/2026 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 17-08-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) :Mrs. Mauna Bhatt, Sr. Adv.
Mr. Malak Manish Bhatt, AOR
Ms. Sukanya Joshi, Adv.

For Respondent(s) :

UPON hearing the counsel the Court made the following
O R D E R

1. Having heard the learned senior counsel appearing for the petitioner(s) and having gone through the materials on record, we are of the view that we should not interfere as the High Court has rightly observed that the petitioner has an alternative remedy of preferring a statutory appeal under

Signature Not Verified
Digitally signed by CHANDRESH
Date: 2026.08.17 20:00:44 IST
Reason:

Section 107 of the Central Goods and Service Tax Act, 2017 (for short "the CGST Act").

2. We grant four weeks' time to the petitioner to prefer the statutory appeal before the Appellate Authority. It shall be open for the petitioner to raise all submissions available to him in law, including deficiencies in the show cause notice.

3. With the aforesaid, the Special Leave Petition stands disposed of.

4. Pending application(s), if any, stands disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

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NEUTRAL CITATION
2026:GUJHC:37527-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1251 of 2026

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M/S SHIVANI ENTERPRISE PROPRIETOR VIBHOR SHIVKUMAR VAID

Versus

UNION OF INDIA & ORS.

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Appearance:
PRIYANK P LODHA(7852) for the Petitioner(s) No. 1
SHASHVATA U SHUKLA(8069) for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 18/06/2026

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present petition, the petitioner has prayed for quashing and setting aside the order dated 30.8.2025 Order in Original vide Form GST DRC – 07 dated 11.9.2025 and the Show Cause Notice dated 29.2.2024.

2. The petitioner is engaged in the activities of trading of scrap. It appears that upon receipt of the intelligence from the Central Goods and Service Tax, Vadodara informing about the fraudulent Input Tax Credit (for short 'ITC') availed by the petitioner from M/s Ganpati Enterprises, a search was conducted at the declared premises of the petitioner. Thereafter, the respondent-authority issued a Show Cause Notice dated 29.2.2024 suggesting imposition of penalties under Section 122(1)(vii) and Section 122(1) (xii), (xvi), (xvii) of the Central Goods and Service Tax Act, 2017 (for short 'the CGST Act'). The petitioner thereafter filed a reply and he was also granted an opportunity for a personal hearing by

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the respondents. Ultimately, the Order in Original dated 30.8.2025 was served on the portal of the petitioner, which is subject matter of challenge before this Court.

3. Learned advocate Mr.Priyank Lodha, appearing for the petitioner, at the outset has submitted that the impugned Show Cause Notice dated 29.2.2024 consisting of only three pages was supplied to the petitioners, and as such, the same is required to be quashed and set aside.

3.1 It is also submitted that the Show Cause Notice mentions about six Relied Upon Documents (for short 'RUDs') at Table-5, out of which it was mentioned that two documents were enclosed with Show Cause Notice and the rest were available with the notice, however, none of the relied upon documents at Sr.No.s. 4 to 6 of Oct, 2021 to Dec, 2021 were provided alongwith the Show Cause Notice and accordingly, the petitioner requested vide a letter dated 9.4.2024 to supply such copies of RUDs in order to file a defense reply. Thereafter, the impugned Order in Original was passed.

3.2 Furthermore, it is submitted that on the application filed by the petitioner, the registration of the petitioner was cancelled with effect from 8.10.2020 by the order dated 16.1.2021, hence there would not be any question of the RUDs of the subsequent period referred into the Show Cause Notice.

3.3 While inviting the attention of this Court to the reply filed by the petitioner on 16.1.2021, it is submitted that the RUDs which are referred to in the Show Cause Notice relate to a much later period and since the period in question is not specified, the Show Cause Notice alongwith the

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Order in Original is required to be quashed. Thus, it is urged that the impugned Show Cause Notice and the Order in Original are required to be quashed and set aside.

4. Per contra, learned Senior Standing Counsel Mr.Shashvata Shukla, appearing for the respondents has submitted that the writ-petition is not maintainable as the petitioner has a statutory remedy of filing an appeal under Section 107 of the CGST Act. So far as the incomplete issuance of the Show Cause Notice of three pages is concerned, it is submitted that the same is also incorrect as the petitioner was supplied the same vide email and thereafter he had participated in the proceedings and in none of the replies or in the personal hearings which were granted to the petitioner it was alleged that the Show Cause Notice of only three pages was supplied and as such, allegations made on the respondents are required to be rejected. So far as the period and dates of RUDs mentioned in the Show Cause Notice are concerned, while referring to the contents of paragraph No.10.1 of the affidavit, it is submitted that RUDs were inadvertently referred of the year 2021, and the period of investigation and the subsequent demand relates to October 2018 to November 2019, spanning financial years 2018-19 and 2019-20, which the petitioner was evidently aware of the same, and he was already in possession of the same. It is thus submitted that complete physical copy of the Show Cause Notice was duly dispatched at the address of the petitioner. It is thus submitted that complete physical copy of the Show Cause Notice was duly dispatched at the address of the petitioner and hence, since the petitioner has never raised such issue during the course of the hearing, the same is required to be dismissed.

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4.1 It is further submitted that the details of the RUD No.1 and 2 are contained in the order in original more particularly in paragraph No.4 with specific narration of RUD No.3 in paragraph No.4.4 and RUD No.4 in paragraph No.4.5, RUD No.5 in paragraph No.4.3 and RUD No.6 in paragraph No.4.7 which discloses that the petitioner was well aware about the allegations levelled against him.

4.2 It is submitted that there is a serious allegation which pertains to dubious transactions with non-existent entities spanning from October 2018 to 2019 and it is urged that the impugned Notice as well as Order may not require to be quashed and set aside.

5. At the outset, we may record that the petitioner has an alternative efficacious remedy of filing an appeal under Section 107 of the CGST Act which is not denied. However, since the petitioner is inviting the order on merits, we are constrained to do so.

6. It is not in dispute that pursuant to the intelligence received by the respondent Department, a physical verification was conducted on the premises of the petitioner on 9.12.2020 under Section 67(1) of the CGST Act. Accordingly, a panchnama dated 9.12.2020 was also recorded and during the inspection of the principal place of business of the petitioner, it was revealed that it was only open space lacking any infrastructure. Accordingly, the petitioner was subjected to scrutiny for recovery of the fake ITC availed by the tax payer/beneficiary falling under the jurisdiction of Ahmedabad (Rural) passed by M/s Sri Ganpathi Enterprises. Accordingly, a show cause notice dated 29.2.2024 in the form of DRC-01 was issued to the petitioner. It is alleged by the

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petitioner in the writ petition that the Show Cause Notice dated 29.02.2024 only consisted of three pages proposing various penalties, as narrated herein above.

7. At the outset, we may refer that after the petitioner was issued show cause notice, he was personally heard by the Department and he had also filed replies during the course of the proceedings. In none of the replies, we find that the petitioner has alleged that he has only received three pages of the show cause notice. This has been categorically denied by the respondents in filing their affidavit-in-reply and it has been asserted that, in fact, a physical copy of Show Cause Notice was duly dispatched to the address declared by the petitioner. Thus, in wake of any objection raised by the petitioner pointing out that he has only received three pages of Show Cause Notice, we are not inclined to interfere with the Show Cause Notice or the Order in Original on this count, more particularly, when this aspect will fall within the domain of appreciation of the facts, which can be done by the appellate authority.

8. With regard to the second allegation about non-receipt of the RUD's and non-mentioning of the period in question for which the allegations of fraudulent availment of ITC is concerned, the respondent in its reply has submitted that due to inadvertent mistake in the list of relied-upon documents, in the Show Cause Notice it was inadvertently mentioned as the year 2021 for the GST return, however, the period for investigation and subsequent demand relate to October 2018 to November 2019, spanning financial years 2018-19 and 2019-20. Hence, as mentioned in the show cause notice, the RUD of these years were available with the petitioner. The petitioner is trying to build out his case

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on a typographical error of mentioning the year of 2021, after participating in the proceedings. In the order in original dated 30.08.2025, the RUDs at Sr.Nos. 3 to 6 of Show cause notice of period from 2018-19 and 2019-2020 are referred and dealt with. Thus, as an afterthought, the petitioner is trying to impress this Court that since his registration was cancelled w.e.f 08.10.2020 vide order dated 16.01.2021, the RUDs mentioned in show cause notice after October 2021 to Dec, 2021 were incorrectly relied upon. The petitioner was well aware in the proceedings the said RUDs pertain prior to the period of cancellation of his registration, and there was a typographical error in the show cause notice of mentioning the years. The petitioner was having the RUDs of GSTR-3B, GSTR-2B and GSTR-1M for the period 2018-19, 2019-2020 and e-way bills. All these documents were scrutinized and form part of the Order in Original. Thus, on this count also, we are not inclined to interfere with the orders or the Show Cause Notice. The petitioner has been offered sufficient opportunity of hearing by the respondent-authority. We do not find that there is any violation of principles of natural justice or statutory provisions. The appellate authority is competent to examine the facts and issues raised in the present writ petition. Hence, we restrain ourselves from interfering with the impugned show cause notice and the order in original by invoking the powers under Article 226 of the Constitution of India. Hence, the writ petition stands **rejected**.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED/13

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