HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD

MAIN CASE NO: WRIT PETITION NO.17990 OF 2024

PROCEEDING SHEET

SL. NO	DATE	ORDER	OFFICE NOTE
	11.07.2024	**SP, J & RRN,J** Sri P.Venkata Prasad, learned counsel represents, Sri M.Naga Deepak, learned counsel for the petitioner. Learned counsel for the petitioner submits that one of the issues involved in this matter is squarely covered, which is under adjudication in W.P.No.11449 of 2024, which has been entertained and interim protection was granted on 29.04.2024. Considering the aforesaid, Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, for respondent Nos.1, 2 and 5, Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.3, Sri T.Chaitanya Kiran, learned Assistant Government Pleader representing Sri Swaroop Oorilla, learned Special Government Pleader for State Tax, for respondent No.4, who are present in the Court, are directed to take notice and file their counters within four weeks. Rejoinder, if any, may be filed within two weeks therefrom. List for analogous hearing with W.P.No.11449 of 2024. Maintaining parity, subject to hearing the other side, till the next date of hearing, no	Transferred to IO Folder before corrections.

SL. NO	DATE	ORDER	OFFICE NOTE
		coercive action be taken against the petitioner pursuant to impugned order, dated 25.03.2024. **SP,J** **RRN,J** tmk/tsr	

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(2010) 9 Supreme Court Cases 496 : (2010) 3 Supreme Court Cases (Civ) 852 : 2010 SCC OnLine SC 987

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

KRANTI ASSOCIATES PRIVATE LIMITED AND ANOTHER . . Appellants;

Versus

MASOOD AHMED KHAN AND OTHERS . . Respondents.

Civil Appeals No. 7472 of 2010± with No. 7474 of 2010±, decided on September 8, 2010

A. Consumer Protection — Consumer forums — Exercise of power — Nature and manner of exercise of power — Duty to record reasons — Importance and necessity of — Principles for, restated — Dismissal of revision petition by National Commission by cryptic, non-reasoned order by just affirming State Commission's order — Unsustainability — Held, reasons have virtually become as indispensable a component of decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies — A quasi-judicial authority like National Commission must record reasons in support of its conclusions — Insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done — Consumer Protection Act, 1986, Ss. 21, 20 and 23 — Practice and Procedure — Revision

(Paras 48 to 51)

B. Consumer Protection — Consumer forums — Jurisdiction and powers of — Jurisdiction of consumer forums (National Commission) — Nature of — Held, Commission has trappings of a civil court and is a high-powered quasi-judicial forum for deciding a lis between the parties — Consumer Protection Act, 1986, Ss. 2(1)(k), 9, 12, 13, 14, 21 and 22 — Scheme of the Act

(Paras 5 to 11)

C. Administrative Law — Administrative action — Quasi-judicial function — Compliance with principles of natural justice — Duty to give reasons — Position under Indian law, examined — Case law discussed — Comparison with English and American law — Administrative Law — Natural justice — Duty to give reasons/Recording of reasons/Speaking order — General principles

D. Natural Justice — Reasoned order/Speaking order necessity — General principles — Principles summarised — Administrative Law — Courts, Tribunals and Judiciary — Judicial process — Exercise of power — Natural Justice/Reasons/Application of mind — Practice and Procedure — Judgment — Reasons

E. Armed Forces — Court Martial — Extent of applicability of principles of natural justice — Constitution of India — Arts. 33, 136(2) and 227(4) — Natural Justice — Reasoned order/Speaking order necessity — Exception — Non-speaking orders — Instances — Court Martial

Held :

The necessity of giving reasons by a body or authority in support of its decision has come up for consideration before the Supreme Court in several cases. Initially the Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point. The Supreme Court always opined that the face of an order passed by a quasi-judicial authority or even

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an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

(Paras 12, 14 and 15)

A.K. Kraipak v. *Union of India*, (1969) 2 SCC 262; *Keshav Mills Co. Ltd.* v. *Union of India*, (1973) 1 SCC 380; *R.* v. *Gaming Board for Great Britain, ex p Benaim*, (1970) 2 QB 417 : (1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA); *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala*, AIR 1961 SC 1669; *Bhagat Raja* v. *Union of India*, AIR 1967 SC 1606; *Mahabir Prasad Santosh Kumar* v. *State of U.P.*, (1970) 1 SCC 764, *relied on*

Ridge v. *Baldwin*, 1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL), *cited*

Only in cases of Court Martial, has the Supreme Court struck a different note wherein it held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial. Court martial as a proceeding is sui generis in nature and the Court of court martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

(Paras 38, 39 and 40)

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Som Datt Datta v. *Union of India*, AIR 1969 SC 414 : 1969 Cri LJ 663; *S.N. Mukherjee* v. *Union of India*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445, *relied on*

In England there was no common law duty of recording of reasons. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons. It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration. It has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. In the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. Such recording of reasons is required as the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review.

(Paras 41, 44 and 46)

Travancore Rayon Ltd. v. *Union of India*, (1969) 3 SCC 868; *Woolcombers of India Ltd.* v. *Workers Union*, (1974) 3 SCC 318 : 1973 SCC (L&S) 551; *Union of India* v. *Mohan Lal Capoor*, (1973) 2 SCC 836 : 1974 SCC (L&S) 5; *Siemens Engg. and Mfg. Co. of India Ltd.* v. *Union of India*, (1976) 2 SCC 981; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248; *Rama Varma Bharathan Thampuram* v. *State of Kerala*, (1979) 4 SCC 782; *Gurdial Singh Fijji* v. *State of Punjab*, (1979) 2 SCC 368 : 1979 SCC (L&S) 197; *Bombay Oil Industries (P) Ltd.* v. *Union of India*, (1984) 1 SCC 141; *Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra Ltd.*, (1990) 3 SCC 280; *S.N. Mukherjee* v. *Union of India*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445; *North Range Shipping Ltd.* v. *Seatrans Shipping Corpn.*, (2002) 1 WLR 2397 : (2002) 4 All ER 390 : (2002) 2 All ER (Comm) 103 (CA), *relied on*

H.H. Shri Swamiji of Shri Amar Mutt v. *Commr., Hindu Religious and Charitable Endowments Deptt.*, (1979) 4 SCC 642 : 1980 SCC (Tax) 16; *Ram Chander* v. *Union of India*, (1986) 3 SCC 103 : 1986 SCC (L&S) 383 : (1986) 1 ATC 47; *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K.S. Gandhi*, (1991) 2 SCC 716; *M.L. Jaggi* v. *MTNL*, (1996) 3 SCC 119; *Charan Singh* v. *Healing Touch Hospital*, (2000) 7 SCC 668 : 2000 SCC (Cri) 1444; *R.* v. *Civil Service Appeal Board, ex p Cunningham*, (1991) 4 All ER 310 (CA); *English* v. *Emery Reimbold and Strick Ltd.*, (2002) 1 WLR 2409 : (2002) 3 All ER 385 (CA); *Cullen* v. *Chief Constable of the Royal Ulster Constabulary*, (2003) 1 WLR 1763 : (2004) 2 All ER 237 (HL), *considered*

Stefan v. *General Medical Council*, (1999) 1 WLR 1293 (PC); *R.* v. *Immigration Appeal Tribunal, ex p Khan (Mahmud)*, 1983 QB 790 : (1983) 2 WLR 759 : (1983) 2 All ER 420 (CA); *Securities and Exchange Commission* v. *Chenery Corpn.*, 87 L Ed 626 : 318 US 80 (1942); *Dunlop* v. *Bachowski*,

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44 L Ed 2d 377 : 421 US 560 (1974), *referred to*

Broom's Legal Maxims (1939 Edn., p. 97); *Winthrop in Military Law and Precedents*, *referred to*

The principles on the recording of reasons can be summarised as follows:

(*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(*b*) A quasi-judicial authority must record reasons in support of its conclusions.

(*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

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(*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

(Para 47)

Ruiz Torija v. *Spain*, (1994) 19 EHRR 553; *Anya* v. *University of Oxford*, 2001 EWCA Civ 405 (CA), *considered*

Defence of Judicial Candor, (1987) 100 Harvard Law Review 731-737, *referred to*

F. Consumer Protection — Consumer Forums — Appeal — Separate appeal — Right to be heard independently

(Paras 49 to 51)

Appeals allowed

B-D/46743/CV

Advocates who appeared in this case:

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Krishnan Venugopal, Senior Advocate (Dr. Sarabjit Sharma, Ms Seema Agarwal, Sumit Sharma, Dr. S.K. Verma, Anshu Mahajan, Gaurav Kejriwal, Anilendra Pandey, Ms Priya Kashyap and M.P. Shorawala, Advocates) for the appearing parties.

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Chronological list of cases cited	***on page(s)***
1. (2003) 1 WLR 1763 : (2004) 2 All ER 237 (HL), *Cullen* v. *Chief Constable of the Royal Ulster Constabulary*	510*a-b*
2. (2002) 1 WLR 2409 : (2002) 3 All ER 385 (CA), *English* v. *Emery Reimbold and Strick Ltd.*	510*a-b*
3. (2002) 1 WLR 2397 : (2002) 4 All ER 390 : (2002) 2 All ER (Comm) 103 (CA), *North Range Shipping Ltd.* v. *Seatrans Shipping Corpn.*	510*a*
4. 2001 EWCA Civ 405 (CA), *Anya* v. *University of Oxford*	511*f-g*
5. (2000) 7 SCC 668 : 2000 SCC (Cri) 1444, *Charan Singh* v. *Healing Touch Hospital*	508*a-b*
6. (1999) 1 WLR 1293 (PC), *Stefan* v. *General Medical Council*	509*b*
7. (1996) 3 SCC 119, *M.L. Jaggi* v. *MTNL*	507*g*
8. (1994) 19 EHRR 553, *Ruiz Torija* v. *Spain*	511*f-g*
9. (1991) 4 All ER 310 (CA), *R.* v. *Civil Service Appeal Board, ex p Cunningham*	509*c-d*, 509*f-g*
10. (1991) 2 SCC 716, *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K.S. Gandhi*	507*e-f*
11. (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445, *S.N. Mukherjee* v. *Union of India*	508*e-f*, 510*c*, 510*d*
12. (1990) 3 SCC 280, *Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra Ltd.*	507*d*

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The Judgment of the Court was delivered by

A.K. GANGULY, J.— Leave granted. These two appeals, one at the instance of the builder and the other at the instance of Corporation Bank, have been filed impugning the order of the National Consumer Disputes Redressal Commission (hereinafter "the said Commission").

2. In the case of the builder, the said Commission has not given any reason and dismissed the revision petition by passing a cryptic order dated 31-8-2007 which reads as under:

> "Heard.
>
> In view of the concurrent findings of the State Commission, we do not find any force in this revision petition.
>
> The revision petition is dismissed."

3. Insofar as the case of the builder is concerned, this Court is of the opinion that the said Commission cannot, considering the way it is structured, dismiss the revision petition by refusing to give any reasons and by just affirming the order of the State Commission.

4. The said Commission has been defined under Section 2(*k*) of the Consumer Protection Act, 1986 (hereinafter "the CP Act") as follows:

> "2.(1)(*k*) 'National Commission' means the National Consumer Disputes Redressal Commission established under clause (*c*) of Section 9;"

5. Under Section 9(*c*) of the CP Act, the said Commission has been established by the Central Government by a notification. The composition of the said Commission has been provided under Section 20 of the CP Act and wherefrom it is clear that the said Commission is a high-powered adjudicating forum headed by a sitting or a retired

Judge of the Supreme Court. Section 21 of the CP Act provides for the jurisdiction of the said Commission.

6. In order to appreciate the questions involved in this case, the provision relating to jurisdiction of the said Commission is set out hereunder:

"21. *Jurisdiction of the National Commission*.—Subject to the other provisions of this Act, the National Commission shall have jurisdiction,—

(*a*) to entertain,—

(*i*) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(*ii*) appeals against the orders of any State Commission; and

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(*b*) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

7. Under Section 23 of the CP Act, an appeal would lie against the order of the said Commission passed in exercise of its powers under Section 21(*a*), to this Court, within 30 days, subject to extension of time by this Court on sufficient cause being shown. Under Section 21(*b*), the said Commission exercises revisional power over orders of the State Commission.

8. The power and procedure applicable to the said Commission has been provided under Section 22 of the CP Act. A perusal of Section 22(1) would show that Sections 12, 13 and 14 of the CP Act, with necessary modification, are applicable to the decision-making process by the said Commission. Under Section 13 of the CP Act, the District Forum has been vested, in certain matters, with the powers of a civil court while trying a suit. Section 13(4) of the CP Act is applicable to the said Commission in view of Section 22(1) thereof. Similarly, Sections 13(5), (6) and (7) will also apply to the said Commission in view of Section 22(1).

9. On a perusal of Sections 13(4), (5), (6) and (7) of the CP Act, it is clear that the said Commission has been vested with some of the powers of a civil court. The following powers have been vested on the said Commission:

"13. (4) For purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

(*i*) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(*ii*) the discovery and production of any document or other material object producible as evidence;

(*iii*) the reception of evidence on affidavits;

(*iv*) the requisitioning of the report of the analysis or test concerned from the appropriate laboratory or from any other relevant source;

(*v*) issuing of any commission for the examination of any witness; and

(*vi*) any other matter which may be prescribed."

10. Under Section 13(5) of the CP Act, every proceeding of the said Commission will be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Penal Code, 1860, and the said Commission shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

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11. The above provisions make it clear that the said Commission has the trappings of a civil court and is a high-powered quasi-judicial forum for deciding lis between the parties.

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in *A.K. Kraipak* v. *Union of India*[1].

13. In *Keshav Mills Co. Ltd.* v. *Union of India*[2] this Court approvingly referred to the opinion of Lord Denning in *R.* v. *Gaming Board for Great Britain, ex p Benaim*[3] and quoted him as saying "that heresy was scotched in *Ridge* v. *Baldwin*[4]".

14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala*[5], the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

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17. The other question which arose in *Harinagar*[5] was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in *Harinagar*[5] the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23).

19. Again in *Bhagat Raja* v. *Union of India*[6] the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of the Mines and Minerals (Development and Regulation) Act, 1957, and having regard to the provision of Rule 55 of the Mineral Concession Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (see AIR p. 1610, para 8). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In *Mahabir Prasad Santosh Kumar* v. *State of U.P.*[7], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In *Travancore Rayon Ltd.* v. *Union of India*[8], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to

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demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (see SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In *Woolcombers of India Ltd.* v. *Workers Union*[9] this Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136

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jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (see SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In *Union of India* v. *Mohan Lal Capoor*[10] this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression "reasons for the proposed supersession" should not be mere rubber-stamp reasons. Such reasons must disclose how mind was applied to the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (see SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd.* v. *Union of India*[11] this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi* v. *Union of India*[12] which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a

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quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi*[12] also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See SCC p. 317, para 39 : AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram* v. *State of Kerala*[13] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji* v. *State of Punjab*[14] this Court, dealing with a service matter, relying on the ratio in *Capoor*[10], held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor*[10] to the extent that : (*Capoor*

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case[10], SCC p. 854, para 28)

"*28.* ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in *H.H. Shri Swamiji of Shri Amar Mutt* v. *Commr., Hindu Religious and Charitable Endowments Deptt.*[15] while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) *Broom's Legal Maxims* (1939 Edn., p. 97) where the principle in Latin runs as follows:

"Cessante ratione legis cessat ipsa lex."

30. The English version of the said principle given by the Chief Justice is that : (*H.H. Shri Swamiji case*[15], SCC p. 658, para 29)

"*29.* ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

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31. In *Bombay Oil Industries (P) Ltd.* v. *Union of India*[16] this Court held that while disposing of applications under the Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. This Court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well-considered orders. In saying so, this Court relied on its previous decisions in *Capoor*[10] and *Siemens Engg.*[11] discussed above.

32. In *Ram Chander* v. *Union of India*[17] this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rules. This Court held that the word "consider" occurring in Rule 22(2) must mean that the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasised that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

33. In *Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra Ltd.*[18] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K.S. Gandhi*[19] this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached (see SCC pp. 738-39, para 22).

35. In *M.L. Jaggi* v. *MTNL*[20] this Court dealt with an award under Section 7 of the

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Telegraph Act and held that since the said award affects

public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (See SCC p. 123, para 8.)

36. In *Charan Singh* v. *Healing Touch Hospital*[21] a three-Judge Bench of this Court, dealing with a grievance under the CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasising". (See SCC p. 673, para 11 : AIR p. 3141, para 11 of the Report.)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in *Som Datt Datta* v. *Union of India*[22] where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in *S.N. Mukherjee* v. *Union of India*[23]. A unanimous Constitution Bench speaking through S.C. Agrawal, J. confirmed its earlier decision in *Som Datt*[22] in *S.N. Mukherjee case*[23], SCC p. 619, para 47 : AIR para 47 at p. 2000 of the Report and held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the court martial as a proceeding is sui generis in nature and the Court of Court Martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of *Winthrop in Military Law and Precedents* are very pertinent and are extracted hereinbelow:

> "Not belonging to the judicial branch of the Government, it follows that Courts Martial must pertain to the executive department; and they

> are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilised under his orders or those of his authorised military representatives."

40. Our Constitution also deals with court-martial proceedings differently as is clear

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from Articles 33, 136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In *Stefan* v. *General Medical Council*[24] it has been held : (WLR p. 1300)

> the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

> "No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in *R.* v. *Civil Service Appeal Board, ex p Cunningham*[25], Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said : (All ER p. 317)

> "... '... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in *R.* v. *Immigration Appeal Tribunal, ex p Khan (Mahmud)*[26] All ER at p. 423, QB at pp. 794-95], the reasons for the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).' "

43. The learned Master of Rolls further clarified by saying : (*Civil Service Appeal Board case*[25], All ER p. 317)

> "... '... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.' "

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons (see *North Range*

Shipping Ltd. v. *Seatrans Shipping Corpn.*[27]). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In *English* v. *Emery Reimbold and Strick Ltd.*[28] it has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen* v. *Chief Constable of the Royal Ulster Constabulary*[29], Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held : (WLR p. 1769, para 7)

> "*7.* ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched."

46. The position in the United States has been indicated by this Court in *S.N.*

Mukherjee[23] in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In *S.N. Mukherjee*[23] this Court relied on the decisions of the US Court in *Securities and Exchange Commission* v. *Chenery Corpn.*[30] and *Dunlop* v. *Bachowski*[31] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(*b*) A quasi-judicial authority must record reasons in support of its conclusions.

(*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

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(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*[32].)

(*n*) Since the requirement to record reasons emanates from the broad doctrine of

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fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain*[33] EHRR, at 562 para 29 and *Anya* v. *University of Oxford*[34], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law,

requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

48. For the reasons aforesaid, we set aside the order of the National Consumer Disputes Redressal Commission and remand the matter to the said forum for deciding the matter by passing a reasoned order in the light of the observations made above. Since some time has elapsed, this Court requests the forum to decide the matter as early as possible, preferably within a period of six weeks from the date of service of this order upon it.

49. Insofar as the appeal filed by the Bank is concerned, this Court finds that the National Consumer Disputes Redressal Commission in its order dated 4-4-2008 has given some reasons in its finding. The reasons, inter alia, are as under:

"We have gone through the orders of the District Forum and the State Commission, perused the record placed before us and heard the parties at length. The State Commission has rightly confirmed the order of the District Forum after coming to the conclusion that the petitioner and the builder, Respondents 3 and 4 have colluded with each other and hence, directed them to compensate the complainant for the harassment caused to them."

50. From the order of the State Commission dated 26-7-2007 in connection with the appeal filed by the Bank, we do not find that the State Commission has independently considered the Bank's appeal. The State Commission dismissed the Bank's appeal for the reasons given in its order dated 6-7-2007 in connection with the appeal of the builders.

51. This Court is of the view that since the Bank has filed a separate appeal, it has a right to be heard independently in support of its appeal. That right has been denied by the State Commission. In that view of the matter, this Court quashes the order dated 26-7-2007 passed by the State Commission as also the order of the National Commission dated 4-4-2008 which has affirmed the order of the State Commission.

52. This case is remanded to the State Commission for hearing on merits as early as possible, preferably within a period of six weeks from the date of service of this order to the State Commission. It is expected that the State Commission will hear out the matter independently and give adequate reasons for its conclusions. We, however, do not make any observations on the merits of the case.

53. Both these appeals are allowed. No order as to costs.

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† Arising out of SLP (C) No. 20428 of 2007. From the Judgment and Order dated 31-8-2007 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2889 of 2007

‡ Arising out of SLP (C) No. 12766 of 2008

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[1] (1969) 2 SCC 262 : AIR 1970 SC 150

[2] (1973) 1 SCC 380 : AIR 1973 SC 389

[3] (1970) 2 QB 417 : (1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA)

[4] 1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL)

[5] AIR 1961 SC 1669

[6] AIR 1967 SC 1606

[7] (1970) 1 SCC 764 : AIR 1970 SC 1302

[8] (1969) 3 SCC 868 : AIR 1971 SC 862

[9] (1974) 3 SCC 318 : 1973 SCC (L&S) 551 : AIR 1973 SC 2758

[10] (1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87

[11] (1976) 2 SCC 981 : AIR 1976 SC 1785

[12] (1978) 1 SCC 248 : AIR 1978 SC 597

[13] (1979) 4 SCC 782 : AIR 1979 SC 1918

[14] (1979) 2 SCC 368 : 1979 SCC (L&S) 197

[15] (1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1

[16] (1984) 1 SCC 141 : AIR 1984 SC 160

[17] (1986) 3 SCC 103 : 1986 SCC (L&S) 383 : (1986) 1 ATC 47 : AIR 1986 SC 1173

[18] (1990) 3 SCC 280

[19] (1991) 2 SCC 716

[20] (1996) 3 SCC 119

[21] (2000) 7 SCC 668 : 2000 SCC (Cri) 1444 : AIR 2000 SC 3138

[22] AIR 1969 SC 414 : 1969 Cri LJ 663

[23] (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984

[24] (1999) 1 WLR 1293 (PC)

[25] (1991) 4 All ER 310 (CA)

[26] 1983 QB 790 : (1983) 2 WLR 759 : (1983) 2 All ER 420 (CA)

[27] (2002) 1 WLR 2397 : (2002) 4 All ER 390 : (2002) 2 All ER (Comm) 103 (CA)

[28] (2002) 1 WLR 2409 : (2002) 3 All ER 385 (CA)

[29] (2003) 1 WLR 1763 : (2004) 2 All ER 237 (HL)

[30] 87 L Ed 626 : 318 US 80 (1942)

[31] 44 L Ed 2d 377 : 421 US 560 (1974)

[32] (1987) 100 Harvard Law Review 731-37

[33] (1994) 19 EHRR 553

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[34] 2001 EWCA Civ 405 (CA)

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2007 (218) E.L.T. 647 (S.C.)

IN THE SUPREME COURT OF INDIA

Dr. Arijit Pasayat and P. Sathasivam, JJ.

UNION OF INDIA

Versus

VICCO LABORATORIES

Civil Appeal No. 5401 of 2007, decided on 26-11-2007

Show cause notice - Jurisdiction - Re-opening of issue - Classification dispute finally concluded by decision of High Court and Apex Court in favour of writ petitioner - Fresh SCN issued pursuant to liberty given by SC to Department to take such test if otherwise so entitled for classifying the product - Impugned SCN was nothing but a repetition of earlier SCNs with slight variations which in no way was relatable to any different test - SCN amounts to reopening of issue which is not permissible - Section 11A of Central Excise Act, 1944. *[para 31]*

Writ jurisdiction - Interference at show cause notice stage - Abstinence from interference at stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule but not without exceptions - Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, the writ Court would not hesitate to interfere even at stage of issuance of show cause notice - Interference at SCN stage should be rare and not in a routine manner - Mere assertion by writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice - It should be prima facie established to be so - Article 226 of Constitution of India. *[para 30]*

Appeal dismissed

CASES CITED

Amrutanjan Ltd. v. Collector — 1995 (77) E.L.T. 500 (S.C.) — *Referred*........................... [Para 17]
Commissioner v. Sharma Chemical Works — 2003 (154) E.L.T. 328 (S.C.) — *Referred*..... [Para 15]
Dabur (India) Ltd. v. Commissioner — 2005 (182) E.L.T. 290 (S.C.) — *Referred*............... [Para 15]
Meghdoot Gramodyog Sewa v. Commissioner — 2004 (174) E.L.T. 14 (S.C.) — *Referred.* [Para 16]
Naturalle Health Products Pvt. Ltd. v. Collector — 2003 (158) E.L.T. 257 (S.C.) — *Referred* [Para 17]
Shree Baidyanath Ayurved Bhavan Ltd. v. Collector — 1996 (83) E.L.T. 492 (S.C.) — *Referred* [Paras 6, 10]

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DEPARTMENTAL CLARIFICATIONS CITED

C.B.E. & C. Circular dated 31-10-1996.. [Para 6]
C.B.E. & C. Letter dated 12-5-1989.. [Paras 6, 28]

REPRESENTED BY : *S/Shri A. Subba Rao and B. Krishna Prasad, Advocates, for the Appellant.*

S/Shri F.S. Nariman, Sr. Advocate, Gopal Jain, Raj Nagrani, R.N. Jaranjawala, Ms. Nandini Gore, Ms. Pragya Singh Baghel, Ms. Simran Brara, Mrs. Manik Karanjawala and Subhash Sharma, Advocates, with him, for the Respondent.

[Judgment per : Arijit Pasayat, J.]. - Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court allowing the writ petition filed by the respondent. Challenge in the writ petition was to the show cause notice dated 29th April, 2005 issued by the Commissioner of Customs and Central Excise, Nagpur (hereinafter referred to as the 'Commissioner') on the ground that the Commissioner was seeking to re-open and re-litigate the issues which have been finally concluded by the decision of the High Court and this Court in favour of the writ petitioner and, therefore, the said show cause notice was without jurisdiction and had been issued in arbitrary exercise of power and that it is an abuse of process of law.

3. The petition was resisted on the ground that at the stage of show cause notice there should not be any inference. In fact the notice was issued pursuant to the liberty given by this Court in C.A. Nos. 7896-97/2003 disposed of by a three-Judge Bench by order dated December 7, 2004. The High Court accepted the position that normally the High Court should not interfere at the show cause notice stage. But in view of the factual scenario the Court entertained the writ petition and decided in favour of the respondent.

4. Background facts in a nutshell are as follows :

The respondent is a manufacturer of various products including Vicco Vajradanti and Vicco Turmeric which are stated to be ayurvedic medicines. A show cause notice dated 8th November, 1976 was issued requiring the respondent to satisfy as to why the said products should not be classified as "cosmetics" and not "ayurvedic medicines". This show cause notice is hereinafter referred to as the "1st SCN". After hearing the respondent, the Commissioner under order, dated 4th June, 1977 classified the said products as "cosmetics". The same was challenged by the respondent by way of Civil Suit No. 143 of 1978 in the Court of Civil Judge, Senior Division, Thane, which came to be decreed in favour of the respondent holding that the said products were "ayurvedic medicines", and therefore, cannot be classified as "cosmetics". The appellants carried the matter in an appeal by filing First Appeal No. 613 of 1982 before the High Court without any success as the same was dismissed on 27th April, 1988 holding that the products were "Ayurvedic medicines". The Special Leave Petition preferred by the appellants being SLP No. 1918 of 1989 was dismissed on 6th September, 1990. Simultaneously, the respondent had also filed the Special Leave Petition No. 14082 of 1988 which came to be disposed of by an order dated 19th April, 1993, while affirming the judgment of this Court with a rider that the claim for refund of the amounts already paid, would be subject to ascertaining whether the amounts were passed on to the purchasers or not, and that the consequential relief shall be subject to the provisions of Section 11B of the Central Excise and Salt Act, 1944 (in short the 'Act') as amended by Act 40/1991.

5. On 28th February, 1986, Central Excise Tariff Act, 1985 (in short 'Tariff Act') was introduced, to be effective from 1st March, 1986. Under the Old Tariff Act, the ayurvedic medicines fell under the Notification No. 234 of 1982, the products being listed at Sl. No. 21. In term of the Tariff Act, the product was sought to be classified by the respondent under Chapter 30 sub-heading 3003.30 and the same was approved by Assistant Commissioner, Nagpur, by his order dated 6th

October, 1986. Pursuant to the direction by the Commissioner, a show cause notice dated 3rd July, 1987 was issued requiring the respondent to show cause as to why the products should not be classified as cosmetics falling under Chapter 33. This was the second Show Cause Notice in relation to the same products, and hereinafter is referred to as the "2nd SCN". After the reply being filed to the 2nd SCN, the same was recalled under the order dated 21st June, 1989. The matter was, however, carried in appeal before the Commissioner of Central Excise (Appeals) but the same was withdrawn on 26th December, 1989.

6. On 31st October, 1996, the Central Board of Excise issued a circular withdrawing its earlier clarification dated 12th May, 1989 in respect of Vicco Products and asked the authorities to reopen and finalise the classification of Vicco products on the basis of the judgment in *Shree Baidyanath Bhavan* v. *CCE, Nagpur*, reported in 1996 (83) E.L.T. 492 : 1996 (9) SCC 402. Consequently, fresh show cause notices dated 2nd May, 1997, 18th September, 1997 and 27th October, 1997 came to be issued requiring the respondent to satisfy as to why the products should not be classified as "cosmetic" falling under Chapter 33. These three show cause notices are hereinafter referred to as the "3rd SCNs". Meanwhile, by Telex dated 8-9-1997, the Board further clarified that the circular dated 31-10-1996 is general in nature and the Vicco products having been subjected to the specific judgment and order of the High Court affirmed by this Court, the circular would not have overriding effect. The department further sought opinion of the Law and Judiciary Department on 13-11-1997. Thereafter, the Union of India moved an application being IA-1 of 1999 in this Court in Civil Appeal No. 2123 of 1993 arising out of the SLP No. 14082 of 1988 which was filed by the respondent for clarification of the order dated 19th April, 1993 with reference, to *Shree Baidyanath's* judgment (supra).

7. On 17-7-2000 the said application was withdrawn stating that the authorities will act in accordance with the provisions of law, which statement was recorded by this Court while disposing of the said application.

8. On 14-5-2001 with reference to the 3rd SCNs, the Deputy Commissioner passed orders classifying the respondent's products as "cosmetics" falling under Chapter 33. The respondent preferred appeal before the Commissioner of Central Excise (Appeals) which came to be allowed by an order dated 10-1-2002. The appellant carried the matter in appeal before CEGAT, which came to be dismissed by an order dated 3-2-2003. The appellant filed special leave petition before this Court. The same were converted into the Civil Appeals No. 7896-97 of 2003 and the appeals were dismissed by this Court on 7-12-2004.

9. Again, on 29-4-2005 a fresh show cause notice came to be issued requiring the respondent to satisfy as to why the products should not be held as products under Chapter 33. The same was questioned before the High Court and by the impugned judgment the same was quashed.

10. The stand of the appellants in support of the appeal is that the liberty granted by this Court in the earlier case was on the footing that there was need for factual adjudication on applying correct position. In the earlier round of litigation the foundation of the revenue's case was the decision in *Shree Baidyanath Ayurved Bhawan's* case (supra). This Court categorically held in the said case as follows :

> 2. In this connection your kind attention is also invited to the Board's Circular No. 11/91-CX-I dated 19-4-03 (copy enclosed) whereby the Board had circulated order No. 22/91-C, dated 8-1-91 of CEGAT in the case of *CCE, Indore* v. *M/s. Shree Baidynath Ayurved Bhavan Ltd.* to the field formations. The Hon'ble Tribunal relying on its earlier Orders No. 438-439/85-C, dated 7-6-1985 [1985 (11) E.L.T. 175 (Tribunal)] and No. 714-715/90-C, dated 10-7-90 [1991 (51) E.L.T. 502 (Tribunal)], all in the cases of *M/s. Shree Baidyanath Ayurved Bhavan* is not an Ayurvedic drug or medicine and it is appropriately classificable under Heading No. 33.06 of the CETA, 1985. Aggrieved by the judgments of the CEGAT the assessee had gone in appeal to Supreme Court. The appeals of M/s. Dabur India Ltd. on the same issue were also tagged with the appeal of Shree Baidyanath Ayurved Bhavan Ltd.
>
> 3. Now the Hon'ble Supreme Court vide its judgment dated 30-3-1995 [1996 (83) E.L.T. 392 (S.C.)] (copy enclosed), has dismissed the appeal of M/s. Shree Baidyanath Ayurved Bhavan Ltd. and M/s. Dabur India Ltd. and upheld the judgments of CEGAT wherein it had been held that

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the product "Dant Manjan Lal" is a toilet preparation and not a medicinal preparation (Ayurvedic) and therefore not classifiable as a medicine (Ayurvedic) and accordingly not eligible for the benefit of exemption notification. The judgment of Supreme Court is being circulated to all the field formations of CBEC for necessary action in the matter.

4. Therefore, keeping in view the aforesaid judgment of Supreme Court the Board has decided to withdraw its aforesaid instructions contained in letter No. F.No. 1031/14/88-CS.3 dated 12-5-1989. You may therefore decide classification of the goods in question in the light of Hon'ble Supreme Court's said judgment under intimation to the Board.

11. It was submitted that fresh materials had been considered and it has been found that the products are to be classified under Entry 33.04 and 33.06 and not by Entry 3003.31. Reference is also made to the Notes in Chapter 30 and Chapter 33. So far as Chapter 30's notes are concerned reference is made to notes 1 and 2 and notes of Chapter 33 which read as follows :

"Chapter 30 1. This Chapter does not cover :

(a) Food or beverages (such as, dietetic, diabetic or fortified food, food supplements, tonic beverages and mineral waters) (Section IV);

(b) Plasters specially calcined or finely ground for use in dentistry (Chapter 25);

(c) Aqueous distillates or aqueous solutions of essential oils, suitable for medicinal uses (Chapter 33);

(d) Preparations of Chapter 33 even if they have therapeutic or prophylactic properties;

(e) Soap or other products of Chapter 34 containing added medicaments;

(f) Preparations with a basis of plaster for use in dentistry (Chapter 34);

(g) Blood albumin not prepared for therapeutic or for prophylactic uses (Chapter 35).

2. For the purposes of Heading No. 30.03 :

(i) 'Medicaments' means goods (other than foods or beverages such as dietetic, diabetic or fortified foods, tonic beverages) not falling within heading No. 30.02 or 30.04 which are either :-

(a) Products comprising two or more constituents which have been mixed or compounded together for therapeutic or prophylactic uses; or

(b) unmixed products suitable for such uses put up in measured doses or in packings for retail sale or for use in hospitals.

(ii) 'Patent or proprietary medicaments' means any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia, Formulary or other publications, namely :-

(a) The Indian Pharmacopoeia;

(b) The International Pharmacopoeia;

(c) The National Formulary of India;

(d) The British Pharmacopoeia;

(e) The British Pharmaceutical Codex;

(f) The British Veterinary Codex;

(g) The United States Pharmacopoeia;

(h) The National Formulary of the U.S.A.;

(i) The Dental Formulary of the U.S.A. and

(j) The State Pharmacopoeia of the U.S.S.R.'

or which is a brand name, that is, a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicine for the purpose of indicating or so as to indicate a connection in the course of trade between the medicine and some person, having the right either as proprietor or otherwise to use the name or mark with or without any indicating of the identity of that person.

Chapter 33

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2. Heading Nos. 33.03 to 33.07 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings with labels, literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialised to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents or are held out as having subsidiary curative or prophylactic value.

4. In relation to products of heading Nos. 33.03, 33.04 and 33.05, conversion of powder into tablets, labelling or relabelling of containers intended for consumers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer, shall be construed as 'manufacture'.

6. Heading No. 33.05 applies, *inter alia*, to the following products; brilliantines, perfumed hair oils, hair lotions, pomades and creams, hair dyes (in whatever form), shampoos, whether or not containing soap or organic surface active agents."

12. It was submitted that the products are sold across the counter and without prescription. The outward packings also described as cosmetics.

13. The primary stand also is that the High Court should not have interfered at the show cause notice stage.

14. In response, learned counsel for the respondent with reference to history of the long drawn litigation submitted that the High Court has rightly taken note of various factual aspects and quashed the show cause notice.

15. *In Dabur India Ltd.* v. *Commissioner of Central Excise, Jamshedpur*, [2005 (4) SCC 9], this Court reiterating its earlier decision in *Commissioner of Central Excise, Calcutta* v. *Sharma Chemical Works,* [2003 (5) SCC 60] held that merely because a product is sold across the counters and not under a doctor's prescription does not by itself lead to the conclusion that it is not a medicament. It was also held that in the product the percentage of medicament may be small but that by itself does not *ipso facto* mean that the product is not a medicament. It was held that generally the percentage or dosage of the medicament will be such as can be absorbed by the human body and that the medicament would necessarily be covered by fillers/vehicles in order to make the product usable.

16. In *Meghdoot Gramodyog Sewa Sansthan, U.P.* v. *Commissioner of Central Excise, Lucknow* - [2005 (4) SCC 15] this Court had held that the products cannot be classified as cosmetics solely on the basis of outward packing of the products. It was specifically held that the composition and the curative properties of the product being admitted, it was not open to the department to hold the product to be cosmetics merely by reason of the outward packing.

17. In *Naturalle Health Products (P) Ltd.* v. *Collector of Central Excise, Hyderabad* - [2004 (9) SCC 136] it was held that the essential character of medicine and the primary function of the medicine is derived from the active ingredients contained therein and it has certainly a bearing on the determination of classification under the Act. Further re-iterating its earlier decision in *Amrutanjan Ltd.* v. *CCE* - [1996 (9) SCC 413] this Court held that "the mere fact that the ingredients are purified or added with some preservatives does not really alter their character."

18. First round of show cause notice dated 8-11-1976 states as follows :

"M/s Vicco Laboratories Ltd. furnished Photostat copies of the certificates bearing Nos. A/Cert/12/75 dated 6-1-1976 and A/Cert/388/76 dated 6-1-1970 issued by Food and Drug Administration, Maharashtra State, Bombay in support of their claim.

M/s Vicco Laboratories, Dombivli are hereby required to show cause to the Asst. Collector, Central Excise, Kalyan Division, Kalyan why "Vicco Vajradanti Paste" and Vicco Turmeric Vanishing Cream should not continue to be classified as tooth paste. T.I. No. 14FF and Cosmetic & Toilet preparation T.I. 14FF respectively as these products are marketed and are known in the Trade parlance as tooth paste and vanishing cream and not as Ayurvedic medicines."

19. Suit No. 143/1998 was filed challenging the show cause notice.

20. Whether the two products Vicco Vajaradanti and Vicco Turmeric Skin Cream were

Ayurvedic Medicines or Cosmetics (tooth paste, vanishing cream, cosmetic cream) was adjudicated in Thane Suit No. 143 of 1978, where evidence was led by the plaintiff (Vicco Laboratories) and by the defendants (Revenue Department). Amongst the issues framed were issue Nos. 1 to 3 reading as follows :

(i) Do Plaintiffs prove that their products Vicco Vajaradanti and Vicco Vanishing Cream are Ayurvedic medicinal preparations?

(ii) Do Defendants prove that Vicco Vajaradanti falls under item 14FF of first schedule of Central Excise and Salt Act, 1944? (Tooth paste including dental cream)?

(iii) Do defendants prove that Vicco Turmeric Vanishing cream falls under item 14F(1) of the said Schedule? (Cosmetic and toilet Preparation for the care of the skin).

21. Eleven witnesses were examined on behalf of the plaintiff and three witnesses on behalf of the Department. The finding of the trial Court on issue Nos. 1 to 3 is as follows :

> "In the result the plaintiff have proved their product Vicco Vajaradanti and Vicco Turmeric as Ayurvedic medicinal preparations whereas the defendants have failed that they fall under tariff items 14FF and 14F. Therefore, Vicco Vajaradanti is not merely a tooth paste but a medical formulation meant for treatment of tooth and gum trouble whereas Vicco Turmeric does not simply give a promise beauty but is meant for treatment of dermatitis. Accordingly, the issue No.1 is held in the affirmative and the issue Nos. 2 and 3 in the negative."

22. In appeal No. 613/1982 filed by the Department in the Bombay High Court, the High Court by judgment dated 27-4-1988 held :

> "Whether the two products are medicine or merely tooth, paste and vanishing cream or rather a cosmetic cream has to be decided on this record. On the record as is available to us, it is more than amply proved by overwhelming evidence that the products would be excisable under Entry 14E and at the rates prescribed from time to time in respect of the said entry. The consumers and doctors, and the later category will include the general practitioners dentists and Ayurvedic experts, consider that the two products are medicines and further that they are Ayurvedic medicines. In this respect even the first two witnesses who were examined on behalf of the defendants were ultimately forced, much against their inclination, to concede that these products were prescribed by doctors and sold by them, under doctors' prescriptions. The third witness examined on behalf of the defendants has not carried the matter any further and her evidence is almost totally useless as far as these proceedings are concerned. In addition to this, we have the classifications made by various governmental authorities including the Sales Tax Commissioner accepting the status of the two products as Ayuvedic medicines. Last but not the least, we have unshaken testimony of P.W. 11 Dr Antarkar, admittedly an expert on Ayurvedic medicines.
>
> There is overwhelming evidence, therefore, on the record which is almost one sided to establish that the two products under consideration must be regarded as Ayurvedic medicines although they may also be used as tooth paste and are used as cosmetic cream."

23. The High Court however held that the plea of plaintiff Vicco Laboratories raised an oral arguments that the products were "exclusively ayurvedic medicines (and therefore, wholly exempt under Entry 14E) could not be accepted since there were no pleadings to that effect: therefore they were taxable at $12^1/_2$% as "patent and proprietary medicines". (Entry 14E).

24. The respondent and the Revenue both approached this Court by SLPs being SLP No. 14082 of 1988 (by Vicco Laboratories) and SLP No. 1918 of 1989 (by Department) against the judgment and order dated 27-4-1988 of the Bombay High Court. SLP No. 1918/1989 was dismissed by this Court on 6-9-1990 whereas consent order dated 19-4-1983 came to be passed in SLP No. 14082/88.

> "We have heard Sri K.K. Venugopal, learned senior counsel for the appellants and Sri K.T.S. Tulsi, learned Additional Solicitor General for the respondents. Leave granted.
>
> 2. The parties have broadly agreed to certain terms for the final disposal of this appeal.
>
> 3. In terms of the said agreement the parties accept judgment of the Bombay High Court that the products in question are rightly classifiable as Ayurvedic Medicines. The stand of the

Revenue is that Ayurvedic medicines are excluded from tariff Item No. 14E and are classifiable under tariff item 68 of the erstwhile Central Excise Tariff and entitled to full exemption under Serial No. 21 of Notification No. 234/82-C.E., dated 1st November 1982, a position which the appellants accept.

4. The question of the refund of the amounts paid would depend on whether the amounts were passed on to the purchasers or not. The consequential relief, if any, shall therefore, be subject to the provisions of Section 118 of the Central Excises and Salt Act, 1944 as amended by ACT 40 of 1991.

5. In terms of the compromise we affirm the judgment of the Bombay High Court dated 27th April, 1988 subject to the modifications indicated above.

6. The appeal is disposed of accordingly, No costs."

25. Clarification application filed before this Court by the Department that the Consent Order dated 19-4-1993 did not apply to the Tariff Act was dismissed as withdrawn on 17-7-2000.

26. Meanwhile, the Tariff Act, came to be passed which repealed the old Tariff Act. The new entries were :

Chapter 30 - dealt with Pharmaceutical products

Chapter 33 - dealt with Essential Oils and Resinoids,
Perfumery, Cosmetic or Toilet Preparations.

27. Meanwhile before the judgment and order of Bombay High Court and of this Court in Thane Suit, afresh (2nd) round of Show cause notices for the period December 1986 to March 1989 were issued. In the show cause notice it was alleged as follows :

"Whereas it appears that these products namely Vicco Vajradanti Powder Paste are meant for oral or dental hygiene and are used as tooth powder and tooth paste, the same appear to be classifiable under sub-heading 3306.00 and chargeable to duty at 15%. Similarly, Vicco Turmeric appears to be a Vanishing Cream falling under sub-heading 3304.00 and;

Whereas no material change in the composition of above mentioned products has been taken place, these products appear to be tooth powder, tooth paste and vanishing cream classifiable under heading 3306.00 and 3304.00 respectively, and

Whereas, Vicco Turmeric Cream has mainly prophylactic cosmetic effect and it cannot be considered Ayurvedic medicine, it appears to be Vanishing Cream only and;

Whereas as per Note 1(d) of Chapter 30 Preparation of Chapter 22 even if they have therapeutic and Prophylactic properties, they are classifiable, under Chapter 33 and are excluded from Chapter 30 and;

Whereas, Vicco Vajradanti Powder is put up in the form of "Dant Manjan" and paste has been put up in the form of "Tooth Paste" and Vicco Turmeric has been put up in the form of Cosmetic/Vanishing Cream; and

Whereas, for the last so many years you were advertising and marketing these products as tooth powder, tooth paste and vanishing cream respectively. Accordingly, Vicco Vajradanti Powder and Paste appear to be preparation for oral and dental hygiene falling under sub-headings 3306.00 and Vicco Turmeric appears to be falling under sub-heading 3304.00."

28. Advice was received from the Central Board of Excise and Customs by letter dated 12-5-1989 which stated as follows :

"Sir,

Sub : Central Excise - Vicco Vajradanti (powder and paste) and Turmeric - Classification under the Central Excise Tariff Act, 1985 - Regarding.

I am directed to refer to your letter F. No. V.Ch. 39 (30) 1/89/1369, dated the 4th January, 1989 on the subject mentioned above and to say that the matter of classification of Vicco Vajradanti (powder and paste) and Vicco Turmeric Cream manufactured by M/s Vicco Laboratories has been got examined in consultation with the Advisor (Ayurvedic and Siddha) in the Directorate General of Health Services.

2. The Board has taken note of Note (2) to Chapter 30 and 33 of the Schedule to the Central Excise Tariff Act, 1985 coupled with the opinion of the Advisor (Ayurvedic and Siddha) in the Directorate General of Health Services including the decision of the Bombay High Court feels

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that there are stronger reasons to treat the subject good as Ayurvedic medicines.

3. Accordingly, it is viewed that the above-mentioned products would be appropriately classifiable as Ayurvedic Medicaments under sub-heading No. 3003.30 of the Schedule of the Central Excise Tariff Act, 1985."

29. At this juncture, it would be necessary to take note of the stand of learned Counsel for the appellants that in the packages meant for export different descriptions were given. In this context it is to be noted that in the packing meant for export instead of the word 'Ayurved', the expression 'Herbal' is used. The special permission was taken from the Drugs Control Authority for such use. The letter dated 14-6-1996 of the Government of India, Ministry of Health & Family Welfare (Department of ISM & H) is relevant. The same reads as follows :

"New Delhi, dated 14-6-1996

To

The Asstt. Drug Controller (India),

New Custom House, Fort,

Bombay-400038.

Sub. : Export of Vicco Vajradanti Tooth Paste, Powder and Turmeric Cream- regarding

A representation received from the firm in regard to export of the subject products with labeling acceptable to importing countries and the modification made in the labels, which are otherwise used in the country. Having examined the matter, it is opined that there may be no objection in export of subject products labeled as herbal products. This permission is limited to export purpose only.

Sd/- Illegible.

(Ashwini Kumar)

For Drug Controller General (I)

Copy to :

Shri G.K. Pendharkar,

Vicco Laboratories,

25, Jerbai Wadia Road,

Parel, Bombay -400012"

30. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be *prima facie* established to be so. Where factual adjudication would be necessary, interference is ruled out.

31. Case of the respondent that the classification of the said products having attained finality pursuant to the decision of this Court, the appellants have no jurisdiction to issue impugned show cause notice on the ground on which it has been issued and it virtually amounts to re-opening of the issue which stands concluded by the decision of this Court, and that therefore it is an abuse of process of law. The High Court after referring to the history of litigation rightly concluded that the matter stood concluded by judgments of this Court and the High Court in respondents' case.

32. In the earlier judgment this Court had given liberty to the Department in the following terms :

"Although the adjudicating authority had found in the course of the hearing that the market survey indicated that the product in question was known as a cosmetic we do not go into the question as this was not the ground on which the show cause notice was issued. The show cause notices having proceeded on a misapprehension of the tests laid down in *Shree Baidyanath's* case, the same cannot be sustained.

The appeals are accordingly dismissed without any order as to costs. It will be open to the Department to take such test if otherwise so entitled in respect of the products for the purpose of classifying the products under the appropriate tariff heading as they may be advised."

33. However, as rightly observed by the High Court the impugned show cause notice was nothing but a repetition of the earlier show cause notices with slight variations which in no way was relatable to any different test.

34. When the factual scenario is considered in the background of the legal principles set out above, the inevitable conclusion is that the appeal is sans merit, deserves dismissal which we direct. Costs made easy.

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2006 (201) E.L.T. 517 (S.C.)

IN THE SUPREME COURT OF INDIA

Ashok Bhan and Markandey Katju, JJ.

DUNCANS INDUSTRIES LTD.

Versus

COMMISSIONER OF C. EX., NEW DELHI

Civil Appeal No. 754 of 2001 with C.A. Nos. 4075-4076 of 2001, decided on 22-8-2006

Demand - Deletion of duty demand - Dues for entire period of dispute settled under Kar Vivad Samadhan Scheme, 1998 - After grant of certificate under Kar Vivad Samadhan Scheme, 1998 as having settled the dispute and payment of amount determined no further proceedings could be initiated or proceeded by any authority under the Act - Tribunal's order of deletion of duty demand of Rs. 17,65,13,315/- raised in show cause notice, affirmed - Section 11A of Central Excise Act, 1944. *[paras 24, 26, 29]*

Penalty - Matter settled in Kar Vivad Samadhan Scheme, 1998 - No allegation much less finding by Department of any clandestine removal of goods without assessment - Tribunal erred in upholding levy of penalty - Penalty set aside - Rules 9(2) and 52A of erstwhile Central Excise Rules, 1944 - Rule 4 of Central Excise Rules, 2002. *[paras 28, 29]*

Demand - No two assessment permissible for same period. *[para 23]*

Appeals disposed off

CASES CITED

Duncans Agro Industries Ltd. v. Union of India — 1989 (39) E.L.T. 511 (Del.) — *Referred* [Para 8]

Government of India v. Madras Rubber Factory — 1995 (77) E.L.T. 433 (S.C.) — *Referred* [Para 16]

Hira Lal Hari Lal Bhagwati v. C.B.I. — 2003 (155) E.L.T. 433 (S.C.) — *Relied on*............ [Para 25]

N.B. Sanjana v. Elphinstone Spinning and Weaving Mills Co. Ltd. — 1978 (2) E.L.T. (J 399) (S.C.) — *Relied on* [Para 28]

Serai Kella Glass Works Pvt. Ltd. v. Collector — 1997 (91) E.L.T. 497 (S.C.) — *Referred*.... [Para 8]

Union of India. v. Godrej & Boyce Mfg. Co. (Pvt.) Ltd. — Civil Appeal No. 12824 of 1989 — *Referred* [Para 22]

REPRESENTED BY : *S/Shri Joseph Vellapally, Sr. Advocate, U.A. Rana, Prashant Thakur, Raghvesh Singh and Ms. Srabonee Roy*

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(for M/s. Gagrat & Co.), Advocates, with him for the Appellant.

S/Shri Mathai M. Paikeday, Sr. Advocate, Ms. Kiran Bhardwaj and B.K. Prasad, Advocates, with him for the Respondent.

[Judgment per : Ashok Bhan, J.]. - These civil appeals are directed against the common impugned order Nos. 829 and 830 of 2000, dated 4-10-2000 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") in Appeal Nos. E/1622/99-A and E/2095/2000-A. Revenue has filed Civil Appeal Nos. 4075-4076 of 2001 against the deletion of duty demand of Rs. 17,67,13,315/- raised in the show cause notice dated 1-10-1986 for the period September 1981 to February 1983 and the assessee has filed Civil Appeal No. 754 of 2001 against the levy of penalty of Rs. One crore. Since these appeals are directed against the common order passed by the Tribunal, we also propose to dispose them of by a common order. The facts are common in both the sets of appeals.

2. This case has a chequered history and has had various round of litigation in different forums. In order to determine the controversy and the point involved in these appeals the following facts may be noticed.

3. M/s. National Tobacco Company Limited, Agarpara, a manufacturer of cigarettes falling under erstwhile Central Excise Tariff Item No. 4-II(2), and holder of Central Excise Licence L-4 No. 3/84 for the manufacture of cigarettes, was merged with M/s. Mirpara Tea Company effective from 1-4-1977. Consequent to this, it became a Division of newly formed M/s. Duncans Agro Industries Limited, Calcutta. Thereupon, Central Excise Licence L-4 No. 1-Cig/I/V/78 dated 18-2-1978 for the manufacture of cigarettes was issued to M/s. National Tobacco Company.

4. In April 1984, M/s. National Tobacco Company was demerged from M/s. Duncans Agro Industries Limited and was made a wholly owned subsidiary of M/s. Duncans Agro Industries Limited in the name and style of M/s. New Tobacco Company. M/s. Duncans Agro Industries Limited, is the respondent in the two appeals filed by the Revenue and the appellant in Civil Appeal No. 754 of 2001 and would be referred to as the assessee.

5. As a result of demerger, a new Central Excise Licence No. L-4 No. 1/Cig/IV/Khar/85 dated 9-3-1985 was issued to M/s. New Tobacco Company Limited for the manufacture of cigarettes.

6. As there was some dispute as to whether excise was leviable on manufacturing cost plus manufacturing profit and post manufacturing cost and profits arising from post manufacturing operations, the provisional assessments were made from July, 1973 to February, 1983. Final assessments were to be made later. On 8-5-1984, Assistant Collector of Central Excise, Calcutta issued a show cause notice to the assessee for the period July, 1973 to February, 1983 calling upon the assessee to show cause as to why :

> "...the deductions claimed on account of freight, interest on freight, rebate, octroi, interest on receivables and tariff rate of duty from the wholesale price should not be disallowed and why the charges on account of freight, interest on freight, rebate, octroi and interest on receivables should not be included in the assessable value and also why the cost of C.F.C. packing charged and realized by them from the buyers should not be included in the assessable value under Section 4(1)(a) and Section 4(4)(d)(i) of Central Excise & Salt Act, 1944 and why price of each product should not be approved accordingly."

7. Collector of Central Excise, Delhi issued another show cause notice on 1-10-1986 to the assessee for the period September, 1981 to February, 1983 alleging that the assessee has willfully mis-declared assessable value of cigarettes from time to time during the period from September, 1981 to February, 1983 in the Central Excise documents. Price Lists with fraudulent intent to evade the payment of correct amount of duty and thereby they have short paid Central Excise duty amounting to Rs. 97,55,56,362/-. Accordingly, the assessee was called upon to show cause as to why :

"(a) the duty short paid amounting to Rs. 97,55,56,362.00 as per Annexure 'D' should not be demanded under Rule 9(2) of the Central Excise Rules, 1944 read with the proviso of sub-section (1) to Section 11A of the Central Excise and Salt Act, 1944.

(b) Penalties should not be imposed on them under Rules 9(2), 52A(5), 210 & 226 of the Central Excise Rules, 1944."

8. Assessee being aggrieved filed a Civil Writ Petition No. 1708 of 1987 in the Delhi High Court on the ground that the show cause notice dated 1-10-1986 issued to the assessee alleging contravention of the central excise duty in respect of cigarettes manufactured and cleared from the factory at Agarpara during the period September, 1981 to February, 1983 and also addendum to the show cause notice dated 1-10-1986 was in excess of the jurisdiction and/or without authority of law inasmuch as the assessee had been paying the excise duty on the basis of the provisional assessments pursuant to filing of provisional price lists and till the price lists and the assessments were finalised a show cause notice could not be issued. According to the petitioner Section 11A of the Central Excises Salt Act, 1944 (for shot "the Act") could not be invoked in cases where duties are paid under provisional assessment made under Rule 9B of the Central Excise Rules, 1944 (for short "the Rules") without first finalizing the assessment. The Division Bench of the High Court dismissed the writ petition by its order dated 12-8-1988 reported in *Duncans Agro Industries Ltd.* v. *Union of India & Ors.*-1989 (39) E.L.T. 511 (Del.). Contention of the assessee that the cause of action for invoking Section 11A would accrue only from the relevant date defined under Section 11A which in case of provisional assessment means the date of adjustment of duty after final assessment under Rule 9B was rejected. This judgment became final and is binding between the parties. This Court later took a contrary view in *Serai Kella Glass Works Pvt. Ltd.* v. *Collector of Central Excise, Patna* [1997 (4) SCC 641].

9. Collector of Central Excise, Delhi took up for hearing the proceedings arising from the show cause notice dated 1-10-1986 and disposed of the same on 27-3-1991 with the interim directions, which are as under :

> "I direct the Divisional Assistant Collector, Kharda Division of Calcutta-II Collectorate to make final assessment in the case under Rule 9B(5) of the Central Excise Rules, 1944, for the period covered by the instant show cause notice as early as possible. He may use the material contained in the instant show cause notice as independent material to support the final assessment after according an opportunity to the manufacturer/other parties concerned to meet the case and after considering the cause show. He is further directed to intimate the undersigned as soon as he completes the said provisional assessment. Thereafter this show cause notice will be taken up for adjudication."

10. In this order the Collector of Central Excise, Delhi gave three fold directions to the Divisional Assistant Collector, Kharda Division of Calcutta-II. namely, (1) To make final

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assessment in the case under Rule 9B(5) of the Rules for the period covered by the instant show cause notice (1-10-1986) as early as possible; (2) He could use the material contained in the show cause notice dated 1-10-1986 as independent material to support the final assessment after affording an opportunity to the manufacturer/other parties concerned to meet the case and after considering the show cause; (3) He was further directed to intimate the Collector of .Central Excise, Delhi as soon as he completes the provisional assessment; and (4) The show cause notice dated 1-10-1986 was to be taken up for adjudication thereafter.

11. The assessee being aggrieved filed an appeal before the Appellate Tribunal at New Delhi, which was disposed of on 9-12-1997. The assessee challenged the finding/observation made by the Collector of Central Excise, Delhi that "thereafter this show cause notice will be taken up for adjudication" on the ground that after finalising of the assessment there would be nothing left for the Collector of Central Excise, Delhi for consideration or decision and therefore, this sentence in the order should be set aside. The appeal was disposed of by observing :

> "....We do not understand the impugned order as recording a finding overruling the contention raised by the appellant the collector had no jurisdiction to adjudicate on the strength of show cause notice dated 1-10-86 or as to whether after finalisation of assessments anything would be left for the Collector to decide. Thereafter the appellant cannot have any grievance. *It is open to the appellant to raise these aspects if after finalisation of assessment the Collector takes up the proceeding before him for adjudication in this matter.*
>
> With this observation, the appeal is disposed of."

[Emphasis supplied]

12. Thus the liberty to take up this point was reserved with the assessee after the finalisation of the proceedings.

13. In pursuance to the interim directions issued by the Collector of Central Excise, Delhi in its order dated 27-3-1991 the office of the Assistant Collector Central Excise, Kharda Division, Calcutta issued addendum dated 20-2-992 incorporating the contents of the show cause notice dated 1-10-1986 in the show cause notice dated 8-5-1984 thereby assuming jurisdiction to adjudicate all issues raised in both the show cause notices.

14. The two show cause notices were finally adjudicated by the Assistant Collector Central Excise, Kharda Division, Calcutta by its order dated 11-1-1996. The assessable value was determined and consequent thereupon demand was raised by finalizing assessments for the entire period from July, 1973 to February, 1983.

15. On 3-7-1996 show cause cum demand notice was issued by the Superintendent, Office of the Assistant Collector Central Excise, Kharda Division, Calcutta on the basis of adjudication order dated 11-1-1996 quantifying the amount of short levy for the period July, 1973 to February, 1983. Assistant Collector Central Excise, Kharda Division, Calcutta adjudicated the show cause cum demand notice dated 3-7-1996 confirming the demands (short levy of Rs. 386,45,71,192.69 and Rs. 66,45,136.19 in respect of cigarettes and smoking mixtures respectively.

16. The assessee being aggrieved against the order of Assistant Collector Central Excise, Kharda Division, Calcutta filed an appeal before the Commissioner (Appeals) Central Excise, Calcutta. Commissioner of Appeals by his order in appeal dated 25-7-1997 accepted the appeal and remanded the matter to the Assistant Collector Central Excise, Kharda Division, Calcutta for recomputation of the duty afresh in the light of the decision of this Court in *Government of India* v. *Madras Rubber Factory* [1995 (4) SCC 349]. Assistant Collector, Central Excise, Kharda Division, Calcutta in compliance of the order of remand dated 25-7-1997 of the Commissioner of Appeals Central Excise, Calcutta recomputed the amount of duty short paid as Rs. 16,6,94,320.34 and Rs. 8,13,683.29 after adjusting Rs. 5.97 crores pre-deposited in the light of the judgment of this Court in *Madras Rubber Factory's* case (supra). This order was later on corrected by issuing a corrigendum and the amount was reduced.

17. After finalization of the proceedings by the Assistant Collector Central Excise, Kharda Division, Calcutta the Commissioner of Central Excise, Delhi passed an order-in-original in show cause notice dated 1-10-1986 determining Rs. 17.67 crores as due as duty liability and imposing a penalty of Rs. One crore.

18. Assessee being aggrieved filed Appeal No. E/1622/99-A/92E/ 2095/2000-A, which has culminated in the impugned order. Tribunal accepted the appeal partly. Duty liability was set aside as it had already been adjudicated in the earlier proceedings but upheld the levy of penalty. While deleting the duty liability the Tribunal observed thus :

> "From this, it is clear that the Collector had left the duty demand raised in the show cause notice dated 1-10-1986 also to be included in the finalisation of the provisional assessment which was pending from 1973. The Revenue had not challenged that order. Pursuant to that order, the Assistant Collector had issued an Addendum to the assessees on 20-2-1992 making the materials relied upon in the show cause notice dated 1-10-1986 as part of the materials for finalising the assessments and the duty demand was finalised after assessees made their representations. That duty demand became final as the Revenue did not challenge it. The order passed on the assessees' appeal against that duty demand was also not challenged by both sides. We, therefore, hold that the duty demand made by the Assistant Collector was a consolidated demand and that demand having become final, no second demand could be made in another adjudication proceeding by the Commissioner. Accordingly, we set aside the duty demand of over Rs. 17 crores made in the impugned order."

19. Revenue being aggrieved has filed Civil Appeal Nos. 4075-4076 of 2001 against the deletion of the duty liability and the assessee has filed the Civil Appeal No. 754 of 2001 against the order maintaining the levy of penalty.

20. Another fact which needs to be noticed is that after the Assistant Collector Central Excise, Kharda Division, Calcutta finalized the assessment order dated 3-12-1996, the Assistant Collector Central Excise, issued show cause notice dated 27-5-1998 stating therein that the order-in-original dated 12-12-1997 the extra amounts realised as "additional consideration" was not taken into consideration and accordingly a demand of Rs. 21.58 crores was made on the assessee. In the meantime, Kar Vivad Samadhan Scheme, 1998 (for short "the KVS Scheme") was introduced by Finance (No. 2) Act, 1998. Pursuant to the said scheme the assessee filed a declaration under Section 89 of the Finance (No. 2) Act, 1998 in respect of the KVS Scheme. An order under the KVS Scheme was passed in pursuance to which the assessee paid the demand raised under the said scheme.

21. Counsel for the parties have been heard at great length.

22. The issue before the Assistant Collector Central Excise, Kharda Division, Calcutta was for the determination of the assessable value of the goods for the period July, 1973 to February, 1983 i.e. the period covered by the show cause notice dated 8-5-1984. The issue before the Commissioner of Central Excise, Delhi was also for determination of

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the assessable value of the goods for the period September, 1981 to February, 1983, the period covered by show cause notice dated 1-10-1986. The show cause notice dated 1-10-1986 was issued against 20 persons including the assessee company. As regards the assessee, for the period September, 1981 to February, 1983, the Commissioner of Central Excise passed the order dated 27-3-1991 directing the Assistant Commissioner to determine the assessable value taking into consideration the materials contained in show cause notice dated 1-10-1986. This he did by noticing the correct position of law laid down by this Court in the case of *Union of India* v. *Godrej & Boyce Mfg. Co. (Pvt.) Ltd.*, (Civil Appeal No. 12824 of 1989 decided on 8-3-90). The Assistant Collector Central Excise, Kharda Division, Calcutta thereafter issued addendum dated 20-2-1992 incorporating the allegations made in show cause notice dated 1-10-1986 in the show-cause notice dated 8-5-1984. The effect of the order passed by the Commissioner of Central Excise, Delhi was that the Assistant Collector Central Excise, Kharda Division, Calcutta alone had the jurisdiction to finally adjudicate and determine the assessable value of the goods cleared from the assessee's factory for the entire period and the consequent duty liability. Either party wishing to dispute the determination made by the Assistant Collector Central Excise, Kharda Division, Calcutta had to do so by invoking the right of appeal to the Commissioner of Appeals, Tribunal and the Supreme Court. In addition the Department could have invoked the short levy provision under Section 11A within a period of six months or invoked the extended period of limitation of 5 years under proviso to Section 11A provided the conditions laid down in the proviso were satisfied. The two show cause notices were finally adjudicated by the Assistant Collector Central Excise, Kharda Division, Calcutta on 11-1-1996. The assessable value determined and consequent demand was raised by finalizing assessments for the entire period July, 1973 to February, 1983. If the revenue was aggrieved by the above proceedings it was incumbent upon them to either invoke the right of appeal against that order under Section 35E(2) or issue a short levy notice under Section 11A within six months. Neither of these two options having been invoked, the order attained finality as against the revenue.

23. It need not be emphasized that there could not be two assessments for the same period.

24. This apart finally determined as due for the entire period of 10 years from the assessee having been settled under the Kar Vivad Samadan Scheme, 1998, there is no scope for any further review or determination of that issue by any authority under the Act.

25. In *Hira Lal Hari Lal Bhagwati* v. *CBI.* [2003 (5) SCC 257], at page 274 this Court observed :

> "We have carefully gone through the Kar Vivad Samadhan Scheme, 1998 and the certificate issued by the Customs Authorities. In our opinion, the GCS is immune from any criminal proceedings pursuant to the certificates issued under the said Scheme and the appellants are being prosecuted in their capacity as office-bearers of the GCS. As the customs duty has already been paid, the Central Government has not suffered any financial loss. Moreover, as per the Kar Vivad Samadhan Scheme, 1998, whoever is granted the benefit under the said Scheme is granted immunity from prosecution from any offence under the Customs Act, 1962 including the offence of evasion of duty. In the circumstances, the complaint filed against the appellants is unsustainable."

And at page 280 it was observed :

> "The Kar Vivad Samadhan Scheme certificate along with *CBI* v. *Duncans Agro Industries Ltd.* - 1996 (5) SCC 591, and *Sushila Rani* v. *C.I.T.* - 2002 (2) SCC 697, judgments clearly

absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process."

26. Thus, after the grant of certificate under the Kar Vivad Samadan Scheme, 1998 as having settled the dispute and payment of the amount determined no further proceedings could be initiated or proceeded with for the period in question.

27. For the reasons stated above, we do not find any substance in the appeals filed by the Revenue. Accordingly, Civil Appeal Nos. 4075-4076 of 2001 are dismissed and the order passed by the Tribunal in this respect is affirmed.

28. Taking up the appeal of the assessee, it may be noted that the proposed penalty was under Rule 9(2) and 52A. This Court in *N.B. Sanjana* v. *Elphinstone Spg. & Wvg. Mills Co. Ltd.* [1971 (1) SCC 337], at page 348 held as under :

"To attract sub-rule (2) of Rule 9, the goods should have been removed in contravention of sub-rule (1). It is not the case of the appellants that the respondents have not complied with the provisions of sub-rule (1). We are of the opinion that in order to attract sub-rule (2), the goods should have been removed clandestinely and without assessment. In this case there is no such clandestine removal without assessment. On the other hand, goods had been removed with the express permission of the Excise authorities and after order of assessment was made. No doubt the duty payable under the assessment order was nil. That, in our opinion, will not bring the case under sub-rule (2)."

29. In the present case there is not even an allegation much less finding by the department that there has been any clandestine removal of goods without assessment. As such the penalty is liable to be set aside. The matter having been settled in the Kar Vivad Samadan Scheme, 1998 the question of determination of the duty payable or levy of penalty did not arise. In our view, the Tribunal clearly erred in upholding the levy of penalty. Accordingly, Civil Appeal No. 754 of 2001 filed by the assessee is accepted and the penalty levied is ordered to be deleted.

30. These two sets of appeals are disposed of in the above terms leaving the parties to bear their own costs.

[NOTE : Text corrected as per Corrigenda Published in 2006 (204) E.L.T. 640 (25th December, 2006 - Vol. 204 : Part 4)]

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2023 (76) G.S.T.L. 191 (Jhar.)

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Rongon Mukhopadhyay and Deepak Roshan, JJ.

AMBEY MINING PVT. LTD.
Versus
COMMISSIONER OF STATE TAX, DHURWA

W.P. (T) No. 361 of 2023, decided on 17-7-2023

Demand and recovery - Show cause notice - Res judicata - Period April, 2019 to November, 2019 - Interest was demanded for delay in filing of GSTR-3B returns - Petitioner's appeal was allowed by First Appellate Authority - Fresh adjudication proceedings were initiated for self-same cause of action, already finalized by First Appellate Order - Two show cause notices issued by different authorities for same period - *HELD :* First Appellate Order attained finality as per Section 107(16) of CGST Act, 2017 - Revenue could not re-agitate and issue fresh show cause notices again for same cause of action covering same period against which order passed by First Appellate Authority had been accepted by Department and same had attained finality - Fresh proceedings was contrary to settled law - Impugned Show Cause Notices were devoid of jurisdiction and hit by res judicata - Those are to be quashed and set aside - Section 73 read with Section 107 of Central Goods and Services Tax Act, 2017 - Section 73 read with Section 107 of Jharkhand Goods and Services Tax Act, 2017 - Rule 142 of Central Goods and Services Tax Rules, 2017 - Rule 142 of Jharkhand Goods and Services Tax Rules, 2017. *[paras 8 to 10]*

Application allowed in favour of assessee

CASES CITED

Commissioner v. Gujarat State Fertilisers and Chem. Ltd. — 2008 (229) E.L.T. 9 (S.C.) — *Referred*.............. [Para 8]
Commissioner v. Prince Gutkha Ltd. — 2015 (322) E.L.T. 165 (S.C.) — *Referred*................ [Para 8]
Duncans Industries Ltd. v. Commissioner — 2006 (201) E.L.T. 517 (S.C.) — *Referred*....... [Para 5]
Godavari Commodities Ltd. v. Union of India — 2020 (33) G.S.T.L. 16 (Jhar.) — *Referred* [Para 4]
Mahadev Construction Co. v. Union of India — 2020 (36) G.S.T.L. 343 (Jhar.) — *Referred*. [Para 4]
Union of India v. Vicco Laboratories — 2007 (218) E.L.T. 647 (S.C.) — *Referred*................. [Para 5]

NOTIFICATIONS CITED

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Notification No. 13/2017-C.T., dated 28-6-2017 .... [Paras 6, 11]
Notification No. 451, dated 29-7-2017 .... [Paras 6, 11]
Notification No. 31/2020-C.T., dated 3-4-2020 .... [Paras 6, 11]
Notification No. 31/2020-S.T., dated 25-6-2020 .... [Paras 6, 11]

REPRESENTED BY : S/Shri K. Kurmy, N.K. Pasari and Ms. Sidhi Jalan, Advocates, for the Petitioner.

Shri Ashutosh Anand, AAG-III, for the Respondent.

[Judgment (CAV)]. - Heard Learned Counsel for the parties.

2. The instant writ application has been preferred for following reliefs :-

(i) For issuance of an appropriate writ(s), order(s), or direction(s) for quashing and setting aside the impugned Show Cause Notice dated 16-9-2022 bearing Ref. No. 1131, dated 16-9-2022 along with Summary of Show Cause Notice in Form GST-DRC-01, dated 16-9-2022 which are at Annexure-1 hereto, issued by the respondent No. 3 for the period April, 2019 to March, 2020 in purported exercise of powers conferred under section 73, Section 75(120), Section 50 of the Jharkhand Goods and Service Tax Act, 2017 read with Rule 142(1) of the Jharkhand Goods and Service Tax Act, 2017 read with Rule 142(1) of the Jharkhand Goods and Services Tax Rules, 2017;

(ii) For issuance of an appropriate writ(s), order(s), or direction(s) for quashing and setting aside the impugned Show Cause Notice dated 20-10-2022 bearing Ref. No. 1510 along with Summary of Show Cause Notice in Form GST-DRC-01, dated 20-10-2022 which are at Annexure-2 hereto, issued by the respondent no. 2 for the period April, 2019 to March, 2020 in purported exercise of powers conferred under section 73 of the Jharkhand Goods and Services Tax Act, 2017 read with Rule 142(1)(a) of the Jharkhand Goods and Services Tax Rules, 2017;

3. The brief fact of the case is that the petitioner is registered with the State GST Authorities under the Jharkhand Goods and Services Tax Act, 2017/Central Goods & Services Tax Act, 2017 *vide* GSTIN No. 20AAFCA2578R1ZD. The case of the petitioner is that two show cause notices were issued and both impugned show cause notices are for the same period for the self-same cause of action (except March, 2020) issued by two different authorities *i.e.*, the Deputy Commissioner of State Tax, West Circle, Ranchi, the Respondent No. 2 and the Assistant Commissioner of State Tax, West Circle Ranchi, the Respondent No. 3. Both the impugned show cause notices (except to the extent of March, 2020) attempted to start a fresh adjudication proceeding in respect of the self-same cause of action which has already attained finality by First Appellate Order dated 16-1-2021.

As per the petitioner, their monthly GSTR-3B returns for the following months under Section 39 of the JGST Act/Rule 61 of the JGST Rules were filed with some delay as tabulated below :

Delay in filing GSTR-3B returns

Sl. No.	Month	Due Date	Date of filing	Delay
1.	April-2019	20-5-2019	14-6-2019	25
2.	May-2019	20-6-2019	20-8-2019	61
3.	Jun.-2019	20-7-2019	21-8-2019	32
4.	Aug.-2019	20-9-2019	21-9-2019	1
5.	March, 2020	20-4-2020	6-5-2020	16

Precisely, there was delay in filing returns on which interest is demanded. As far as delayed payment of tax is concerned; the Petitioner has already discharged interest of Rs. 23,95,500/- which is not the subject matter of dispute in the instant case.

4. By the impugned show cause notice dated 16-9-2022 interest is demanded not for delayed payment of tax but for delayed filing of GSTR-3B returns. In the first round of litigation, the respondent No. 2, straight away passed order No. 22, dated 14-3-2020 (Ref. No. ZA200320001253R) in purported exercise of powers under Section 73 of the JGST Act and issued