CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II
(E-Hearing)

Customs Appeal No.70604 of 2025

(Arising out of Order C.No.CUS/BDWH/W58/7/2025-W/H-O/o Pre Commr-Cus-Commrte/5479 dated 27/03/2025 passed by Commissioner (Appeals) Customs, Noida)

M/s Bhagwati Products Ltd., **.....Appellant**

(Entire Tower WTC One C, TZ-13A,
IT Park, Tech Zone, Greater Noida-201308)

VERSUS

Commissioner of Customs (Pre.), Noida **....Respondent**

(Concor Complex, Greater Noida-201311)

WITH

Customs Appeal No.70613 of 2025

(Arising out of Order C.No.CUS/BDWH/W58/8/2025-W/H-O/o Pre Commr-Cus-Commrte/5478 dated 27/03/2025 passed by Commissioner (Appeals) Customs, Noida)

M/s Bhagwati Products Ltd., **.....Appellant**

(Entire Tower Tec-1 & Entire Tower Tec-2,
TZ-13A, IT Park, Tech Zone, Greater Noida-201308)

VERSUS

Commissioner of Customs (Pre.), Noida **....Respondent**

(Concor Complex, Greater Noida-201311)

APPEARANCE:

Shri B.L. Narsimhan, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70859-70860/2025

DATE OF HEARING : 18 September, 2025
DATE OF PRONOUNCEMENT : 12 December, 2025

SANJIV SRIVASTAVA:

These appeals are directed against C No CUS/BDWH/W58/2025-W/H-O/o Pr Commr-Cus-Commrte/5478 dated 27.03.2025 & C No CUS/BDWH/W58/ 2025-W/H-O/o Pr Commr-Cus-Commrte/5479 dated 27.03.2025 of the Principal Commissioner Customs, Noida. By the impugned communications following has been held:

> *"I hereby reject the application dated 14.12.2024 of M/s Bhagwati Products Limited, Entire Tower Tec-1 & Entire Tower Tec-2, TZ-13A, IT Park, Tech Zone, Greater Noida, Gautam Budh Nagar -201308 for the License for Private Warehouse under Section 58 of the Customs Act, 1962 along with the permission to carry out Manufacture and Other Operations under Section 65 of the Act."*
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> *"I hereby reject the application dated 14.12.2024 of M/s Bhagwati Products Limited, Tower WTC One C, TZ-13A, IT Park, Tech Zone, Greater Noida, Gautam Budh Nagar - 201308 for the License for Private Warehouse under Section 58 of the Customs Act, 1962 along with the permission to carry out Manufacture and Other Operations under Section 65 of the Act."*

1.2 Since the issues involved in both the communications and observation made for rejection in both, are identical both the appeals against these communications have been taken up for consideration simultaneously.

2.1 Vide applications dated 14.12.2024 appellant had applied for grant of License for Private Warehouse at the addresses indicated in the application under Section 58 of Customs Act, 1962 (Act) read with Private Warehousing Licensing Regulation, 2016 (PWLR), along with the permission to carry out of Manufacture and Other Operations under Section 65 of the Act read with Manufacture and Other Operations (No.2) Regulations, 2019 (MOOWR).

2.2 On scrutiny of the documents- Balance Sheet of the appellant it was observed that cases as detailed in table below were pending against the appellant.

S No	Name of the Case	Amount 'Rs	Authority with whom pending
1	Central Excise-Uttarakhand	0.44 Crores	Supreme Court
2	Income Tax Act	2.14 Crores	CIT (Appeals)

2.3 Appellant was asked to provide the documents in respect of the above cases vide letter dated 13.02.2025

2.4 From the order in original no 66/Commissioner/DDN/2017 dated 04.10.2017 it was evident that

- demand of duty amounting to Rs 4,45,47,063/- (Rs Four Crore Forty Five Lakhs Forty Seven Thousand and Sixty Three Only) was confirmed against the appellant under Section 28 of the Act, read with Rule 8 of the Customs Import of Goods at Concessional Rate of Duty Rules, 1996. Amount of Rs 1,05,88,995/- paid by the appellant under protest was appropriated against the confirmed demand.
- a penalty of Rs 4,45,47,063/- (Rs Four Crore Forty Five Lakhs Forty Seven Thousand and Sixty Three Only) was imposed under Section 114A of the Act.

2.5 Appellant challenged this order in original before the CESTAT. Tribunal vide Final Order No 50386/2018 dated 20.02.2018 dismissed the appeal filed by them. Thereafter, appellant filed appeal before the Hon'ble Supreme Court which is pending.

2.6 As per the order in original a penalty of Rs 4,45,47,063/- (Rs Four Crore Forty Five Lakhs Forty Seven Thousand and Sixty Three Only) was imposed on the appellant. Appellant was asked to clarify in this respect. They filed an undertaking dated 22.01.2025, stating *"4. We also hereby undertake that the company …… have neither been penalized …….. under the Customs Act,1962 ……."*

2.7 Appellant was asked to clarify in respect of the discrepancies in the figures as per balance sheet & undertaking dated 22.01.2025 and order in original. They vide their letter dated 03.03.2025 clarified stating as follows:

> *"The duty demand raised by the authorities stands at INR 4.45 crores, out of which INR 1.05 crores has already been discharged through TR-6 challans. Additionally, INR 3.39 crores has been voluntarily paid as customs duty on fresh imports of replacement components, which were necessitated due to the scrapping of defective parts. Given this, we submit that the duty demand has effectively been met, either through direct payments or through subsequent imports where duty was duly paid."*
>
> *"the Company has not been penalized under the Customs Act, 1962, the Company submits that the matter is currently under litigation before the Hon'ble Supreme Court, with no final adjudication on any alleged violations. The undertaking dated 22.01.2025. was given on the premise that a penalty cannot be considered final until the judicial process concludes with an adverse ruling. It would be inappropriate to assume that the Company has been rightly penalized while the dispute remains pending. Therefore, the statement in the undertaking is neither misleading nor incorrect but accurately reflects the present status of the case, where no conclusive liability has been established."*

2.8 Appellant relying on the decision of Delhi Bench in case of Kunadan Care Products Ltd. [Final Order No 56198/2024 dated 31.07.2024] and Chennai Bench in case Flemingo DFS Private Limited [Final Order No 40621/2023 dated 31.07.2023] requested that their application be allowed.

2.9 After following the principles of natural justice and hearing the appellant representatives, both the applications have been rejected.

2.10 Aggrieved appellant has filed these appeals.

3.1 We have heard Shri B L Narsimhan & Shri Atul Gupta Advocate for the appellant on 21.08.2025 and subsequently by E-hearing on 18.09.2025. We have also heard Shri A K Choudhury, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsels submitted:

- **Regulation 3/2) of the PWLR, 2016 should be strictly interpreted**
  - Regulation 3(2) of the PWLR, 2016, sets out the categories of cases wherein the licence shall not be issued . Hence, it is a provision barring grant of licence in certain specific situations. It is well settled legal position that such provisions which bar the issuance of licence etc., have to be strictly construed and also keeping in mind the purpose of such provisions.
  - the above provisions clearly show that the disqualifications mentioned therein are of serious nature. Hence, these provisions must receive strict construction.
- **Expression 'offence' mentioned in Regulation 3(2) should mean only criminal offence for which the person is criminally punished and not any civil contravention or infraction for which fiscal penalties are imposed.**
  - Clause (c) of Regulation 3(2) is the subject matter of interpretation in this case. The said clause employs the phrase "penalised for an offence...." The expression 'offence' is not defined in the Customs Act or the Regulation in question. The expression 'offence' is defined in Section 3(38) of The General Clauses Act, 1897 as under.:
  - "3. Definitions. - In this Act, and in all Central Acts and Regulations made after the

commencement of this Act, unless there is anything repugnant in the subject or context,-

- (38) "offence" shall mean any act or commission made punishable by any law for the time being in force;'
- Thus act or commission made punishable by any law would be an offence under the Customs Act or the Regulations made thereunder. The expression punishable' is again of significance, and importance. The expression 'punishable' would mean a punishment inflicted on the person under any criminal proceedings and the same would not cover 'imposition of fiscal penalty.
- The expressions, punish, punishment or punishable are always used contextually relating to crime in criminal proceedings and not equated with imposition of penalties for violation of provisions of law.
- The above submission also gets fortified if regard is had to the other clauses of Regulation 3(2) which clearly establishes that only when criminally the person is punished, the same becomes a bar for grant of the licence. For example, clause (b) of Regulation 3(2) refers to "convicted for an offence...". Similarly, sub-clause (iv) of clause (e) refers to "criminal proceedings are pending" and "offences involved are of such nature that he is not a fit person for grant of licence." Thus, a combined reading of the various sub- clauses of Regulation 3(2) and a contextual interpretation of the said clauses clearly indicate that the phrase "penalized for an offence..." would get attracted only when the applicant has been punished for an offence in a criminal

proceeding under any of the Acts mentioned therein viz., Customs Act, Central Excise Act or Finance Act, 1994. The expression "offence' has to have the same meaning throughout Regulation 3(2) in any of the sub-clauses therein, which is 'an act or commission which is punished under the criminal proceedings. The expression "offence' cannot have different meanings for different clauses of Regulation 3(2). Therefore, the bar under Regulation 3(2)(c) will get attracted only when the applicant has been punished for the specified offence in a criminal proceedings initiated either under the Customs Act or the Central Excise Act or the Finance Act, 1994 and not when the applicant has been imposed with a penalty in an adjudicatory proceedings under the other provisions of either the Customs Act or Central Excise Act or the Finance Act, 1994

- **Issue involved is no longer res integra and stands decided by the precedents. Reliance is placed on following decisions:**
  - Deepak Fertilisers and Chemicals Corporation Limited [2025 (393) ELT 631 (Guj)] (para 19-22, 25,26)
  - Kashmir Conductors [1997 (96) ELT 257 (Tribunal)] (para 10.2)
  - Kundan Care Products Ltd. [Final Order No.56198/2024 dated 31st July 2024] (para 34, 35 and 40)
  - Mumbai Travel Retail Private Limited [Final Order No.40531/2025 dated 9th May 2025] (para 29-35)
- **Reasoning of the Ld. Commissioner in the impugned order comparing clause (b) and clause (c) of Regulation 3(2) to come to the**

conclusion that 'penalised for offence' in cause (c) would only mean fiscal penalty imposed under the Customs Act and not criminal offence is completely incorrect.

- Clause (b) Regulation 3(2) uses the phrase "convicted for an offence". Clause (c) of Regulation 3(2) uses the expression "penalized for an offence". The expression "convicted" in the criminal jurisprudence has a meaning and connotation. Convicted does not mean 'punished' or 'penalized.' 'Convicted only means that some person who has been accused of an offence under the criminal justice system has been found guilty of such offence. Black's Law Dictionary defines "convict' and 'conviction' as under.:
  - Convict To prove or officially announce (a criminal defendant) to be guilty of a crime after proceedings in a law court; specif., to find (a person) guilty of a criminal offense upon a criminal trial, a plea of guilty, or a plea of nolo contendere (no contest)
  - Conviction ... The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty. The judgment (as by a jury verdict) that a. person is guilty of a crime.
  - Punishment: A sanction - such as a fine, penalty, confinement, or loss of property, right, or privilege assessed against a personal who has violated the law
  - Sentence Criminal procedure - The judgment that a court formally pronounces after finding a criminal

defendant guilty; the punishment imposed on a criminal wrongdoer

- In criminal jurisprudence, conviction and sentencing are two distinct stages and every conviction does not necessarily mean that the person who has been found guilty will be treated as punished or he will be met with punishment. Conviction which is not followed up by imposing sentence by way of punishment remains only conviction and not does not amount to 'punished.'
- Thus if somebody has been found to be guilty of an offence under Regulation 3(2) will get attracted any other law for the time being in force, even if no punishment has been imposed on him, clause (c) of the Regulation will get attracted only if a punishment has been imposed on the person concerned after he has been found guilty of an offence either under the Customs Act, or Central Excise Act or the Finance Act, 1994.

- The interpretation placed by the Ld. Commissioner would lead to absurd results and hence such an interpretation same needs to be avoided.
- In any case, even if the interpretation of the Ld. Commissioner on the construction of Regulation 3(2)(c) is assumed to be correct, without accepting it, in the facts of the present case, Regulation 3(2)(c) does not get attracted.
- The appellant in the present case has been imposed with a penalty of the Customs Act, vide the order-in-original dated 4th October 2017 which is being treated as 'penalised for an offence' by the impugned order. Hence, the closest provision under Section

135 which requires consideration in the present case is a portion of clause (a) of Section 135(1) which treats "any fraudulent evasion or attempt at evasion of duty chargeable on the goods" as an offence, for the purpose of the Customs Act. Thus, what is treated as an offence under Section 135(1)(a) is "fraudulent evasion or attempt at evasion of duty". In other words, only when there is a finding by the appropriate authority n an adjudication proceedings hat the person concerned has fraudulently evaded the duty chargeable on the goods and thus imposes penalty under the appropriate provisions of the Customs Act, the same would constitute an offence and such a person can be treated as "penalised for an offence', for the purpose of Regulation 3(2)(c).

- Merely because a penalty has been imposed on the applicant in another proceeding under Section 114A of the Act, without any finding of fraudulent evasion of duty, would not ipso facto mean that the person has been 'penalised for an offence'. For the applicant to fall under the category of penalised for an offence,' it is necessary that he should have been imposed penalty under the provisions of the Customs Act based on a finding of "fraudulent evasion of duty.' If there is no such finding of fraudulent evasion of duty,' even if such a person has been imposed with a penalty under the Act, the same would not come under the category of “penalised for an offence."
- A bare comparison of the above penalty provisions under Section 114A, 114AB & 114AC Customs Act would clearly that wherever the Parliament wanted to use the expressions fraud, evasion etc., the same has been employed. Crucially, Section 114A of the Act does not employ either of the expressions 'fraud or 'evasion of duty'. In any case, it does not employ

the expression 'fraudulent evasion of duty or attempt at evasion of duty' which is treated as an offence under Section 135(1)(a). On the other hand, Sections 114AB and 114AC employs the expression "fraud" which is the basis for imposing penalty under those sections. Thus, it becomes clear that even if penalty is imposed under Section 114A of the Act, which would not amount to 'fraudulent evasion of duty'.

- From the order in original dated 14.10.2017 which is the basis of the impugned order not grating the warehousing licence, it is evident that neither there has been any allegation of fraudulent evasion of duty nor there is any finding of fraudulent evasion of duty on the part of the appellant. All that was found was that the appellant violated the mandatory conditions of the notification for which penalty has been imposed under Section 114A of the Act. Thus, when there is no finding of fraudulent evasion of duty' against the appellant, merely because penalty has been imposed on the appellant under Section 114A of the Act, it cannot be said that the appellant has been 'penalised for an offence'.

3.3 Authorized representative reiterated the findings recorded in the impugned communications.

4.1 We have considered impugned communications along with the submission made in appeal and during the course of arguments.

4.2 Impugned communications records as follows for rejecting the applications made by the appellant. For ease of reference we have referred to communication in appeal No C/70604/2025.

"12. I have carefully gone through the facts of the case, written submissions dated 14.02.2025, 03.03.2025 and 13.03.2025 made by M/s Bhagwati Products Limited and the evidences available on record. I have also gone

through the provisions of the Act, the PWLR, the MOOWR and the case laws relevant to the case. The submissions made by the party's representative during the course of personal hearing too have been considered by me. Accordingly, I give my findings as under.

13. M/s Bhagwati Products Limited, have applied for the License for Private Warehouse under MOOWR, 2019 for manufacture of Mobile Phone (HSN 85171300) at Greater Noida. They proposed to import certain parts and components of Mobile Phone and its PCBA. It is also on record that vide Order-in-Original 66/ Commissioner/DDN/2017 Dated 04.10.2017, M/s Bhagwati have been penalized under Section 114A of the Act for deliberately violating the provisions of the Notification 12/2012-Customs dated 17.03.2012 and Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 /"the IGCRD Rules 1996"hereinafter] by not following their mandatory conditions. The adjudicating authority had held that M/s Bhagwati had short paid the duty with the intention of wrong availment of the concessional rate of duty under the said Notification which was otherwise not available to them.

14. Since M/s Bhagwati have been penalized under the Act, they are not eligible for the license in terms of the Regulation 3(2)(c) of the PWLR which is reproduced hereunder for readv reference: -

"3. Licensing of private warehouse.-

(1) ……

(2) The Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, shall not issue a license to an applicant if-

(a) he has been declared an insolvent or bankrupt by a Court or Tribunal;

(b) he has been convicted for an offence under any law for the time being in force;

(c) he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994);

(d) ……

(e) …..

15. M/s Bhagwati have contended that they cannot be said to have been penalized because they have filed an appeal and the matter is currently under litigation before the Hon'ble Supreme Court with no final adjudication on any alleged violations, and until the judicial process concludes with an adverse ruling, penalty cannot be considered final. In this regard, I find that there is no dispute that M/s Bhagwati have been penalized under Section 114A of the Act vide Order-in-Original No. 66/Commissioner/DDN/2017 Dated 04.10.2017 which has also been upheld by the Hon"ble CESTAT, New Delhi vide Final Order No. 50836/2018 Dated 20.02.2018. The contention of M/s Bhagwati that they cannot be said to have been penalized because they have filed an appeal which is pending has been made without any legal basis and is therefore legally untenable. Until the said order vide which penalty has been imposed on M/s Bhagwati has been quashed by a competent authority, it would be wholly erroneous to contend that M/s Bhagwati has not been penalized.

16. M/s Bhagwati have also contended that they have been penalized only for contravention of the Act and not for any offence under Chapter XVI of the Act and therefore, provisions of Regulation 3(2)(c) of the PWLR do not apply on them. In this regard, I find that M/s Bhagwati have been penalized under Section 1 14A of the Act vide Order-in-Original No. 66/Commissioner/DDN/2017 Dated

04.10.2017, which has also been upheld by the Hon'ble CESTAT, New Delhi vide Final Order No. 50836/2018 Dated 20.02.2018. Therefore, the issue to be deliberated is whether the penalty imposed under Section 114A of the Act is covered within the scope of the provisions of Regulation 3(2)(c) of the PWLR, in view of the fact that the Section 114A does not fall under Chapter XVI of the Act.

17.1 At this stage I consider it necessary to refer to the Regulation 3 of the PWLR which is reproduced hereunder for ready reference:-

"3. Licensing of private warehouse.

(1) ……..

(2) The Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, shall not issue a license to an applicant if-

(a) he has been declared an insolvent or bankrupt by a Court or Tribunal,

(b) he has been convicted for an offence under any law for the time being in force;

(c) he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994);

(d) …..

(e) ….

17.2 On a careful perusal of the aforesaid provisions of the PWLR, it is seen that the Regulation 3(2)(b) bars an applicant from issue of the license if he had been "convicted for an offence under any law for the time being in force". It is significant to note that the expression used here is "an offence under any law" and term "any law" in this expression would necessarily include the Customs Act, 1962 itself. In other words, if an applicant is convicted for an offence under the Customs Act, 1962, he would be

debarred from issue of the license under PWLR. It is obvious that if an applicant is convicted for an offence under the Customs Act, 1962, he would be penalized also for such an offence in terms of the law either by way of imprisonment or fine or both. Therefore, it is only logical as well as legal to conclude that if an applicant is penalized for an offence under the Customs Act, 1962, he would be debarred from issue of the license under PWLR, by virtue of the provisions under the Regulation 3(2)(b).

17.3 Now, I proceed to examine the scope of the Regulation 3(2)(c). in light of the aforesaid discussion in respect of the Regulation 3(2)(b). Significantly, the Regulation 3(2)(c) has used the expression "penalized for an offence", instead of "convicted for an offence" used in the Regulation 3(2)(b). This clearly indicates the intention of the legislature that the "offence referred to in the Regulation 3(2)(b) are those violations of law which attract conviction by a criminal court of law, and the "offence" referred to in the Regulation 3(2)(c) are those violations of law which attract imposition of penalty by an authority in a civil proceeding. I therefore hold that the expression "penalized for an offence" used in the Regulation 3(2)(c), must be interpreted to mean "penalized for contravention of any of the provisions". Only such an interpretation would make the clause (c) of the Regulation 3(2) workable. If it is interpreted, as being contended by M/s Bhagwati, that the clause (c) of the Regulation 3(2) shall apply only when the applicant is penalized for one of the offences which have been specified under Chapter XVI of the Act - such as under section 132, section 133, season 134 and section 135, then in such a scenario, the clause (b) of the Regulation 3(2) itself would get attracted because the expression "any law" appearing in the clause (b) would definitely include the Customs Act, 1962 itself, and therefore, there was no need for the legislature to provide the Regulation 3(2)(c) to debar such an applicant.

In other words, the interpretation put forth by M/s Bhagwati the expression "penalized for an offence" in the Regulation 3(2)(c) refers to the offences specified under Chapter XVI of the Act would render the Regulation 3(2)(c) itself redundant and otiose. It has already been settled in numerous judgments by the Supreme Court of India that such an interpretation which renders a particular provision redundant and otiose cannot be accepted in law. To quote from the judgment of the Supreme Court of India in the case of "High Court Of Gujarat & Anr vs Gujarat Kishan Mazdoor Panchayat & Ors' delivered on 10 March, 2003:

> *"The Court while interpreting the provision of a statute, although, is not entitled to re-write the statute itself, is not debarred from "ironing out the creases". The court should always make an attempt to uphold the rules and interpret the same in such a manner which would make it workable.*
>
> *It is also a well settled principles of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided."*

17.4 Therefore, the expression "penalized for an offence" appearing in the clause (c) of the Regulation 3(2), must be interpreted to mean "penalized for contravention of any of the provisions" in the Act for which penalty may be imposed under the Act. This interpretation would also be in harmony of the Section 58B of the Act which provides for cancellation of license already granted if a licensee contravenes any of the provision of the Act.

The provisions of Section 58B of the Act are also reproduced as under:

> *"(1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions*

of the license, the Principal Commissioner of Customs or Commissioner of Customs may cancel the license granted under section 57 or section 58 or section 58A:

Provided that before any license is cancelled, the licensee shall be given a reasonable opportunity of being heard.

(2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1)."

18. I fnd that M/s Bhagwati have relied upon various case laws to support their view that the provisions of Regulation 3(2)(c) of the PWLR do not apply on them on the ground that they have been penalized only for contravention of the Act and not for any offence under Chapter XVI of the Act. I now therefore proceed to examine the case laws relied upon by M/s Bhagwati vide their letter dated 13.03.2025 as under

18.1 In the case of M/s Kundan Care Products Limited Vs Commissioner of Customs, New Delhi, supra, the appellant had been imposed a penalty under Section 112(a) of the Customs Act, 1962. Hon'ble CESTAT had opined that the words "Contravention" and "Offence" used under the Act were distinct and held that the word "offence used in the Regulation 3(2)(c) of the PWLR referred to the offences mentioned under the Chapter XVI of the Customs Act, 1962, and not to the contraventions mentioned elsewhere. Hon'ble CESTAT had therefore held that the imposition of penalty under Section 112(a) of the Customs Act, 1962 did not amount to "penalized for an offence under the Act", and accordingly ordered at para 44 as under:

> *"In view of the aforesaid, it can safely be concluded that the order dated 24.01.2022 passed by the Additional Commissioner, that alone has been made the basis for cancelling the License issued to the appellant, does not penalise the appellant for an 'offence' under the provisions of the Customs Act. Only a penalty has been imposed upon the appellant for 'contravention' of the provisions of section 46 of the Customs Act. The order dated 17.08.2023 passed by the Commissioner, therefore, cannot be sustained".*

I have carefully perused the aforesaid judgement of the Hon'ble CESTAT and find that it was not brought to the notice of the Hon'ble CESTAT that the Regulation 3(2) of the PWLR also contained a clause (b) which debarred an applicant from issue of the license if he had been "convicted for an offence under any law for the time being in force", and that therefore the expression "penalized for an offence" in the clause (c) of the Regulation 3(2), must be interpreted to mean "penalized for contravention of any of the provisions". In other words, it was not brought to the notice of the Hon'ble CESTAT that the interpretation that the expression "penalized for an offence" in the Regulation 3(2)(c) refers to the offences specified under Chapter XVI of the Act would render the Regulation 3(2)(c) itself redundant and otiose in light of the Regulation 3(2)(b). I therefore respectfully hold that the ratio laid down by the Hon'ble CESTAT in the case of M/s Kundan Care Products Limited Vs Commissioner of Customs, New Delhi, supra, that the word "offence" used in the Regulation 3(2)(c) of the PWLR referred to the offences mentioned under the Chapter XVI of the Customs Act, 1962, and not to the contraventions mentioned elsewhere cannot be relied upon.

Moreover, as informed by the Additional Commissioner (Review), ACC Export Commissionerate New Delhi, vide letter F.No. GEN/REV/1149/2024-Rev-O/o Commr-Cus-ACC(E) Delhi-I/10529 Dated 20.03.2025 (RUD-14), an appeal has been preferred by the department against the said Final Order No. 56198/2024 dated 31.07.2024 of the Hon'ble CESTAT, New Delhi. Therefore, reliance cannot be placed on the said Order.

18.2 Further, M/s Bhagwati have relied upon the judgment passed by Securities Appellate Tribunal, Mumbai in the case of Reliance Industries Limited, Mr. Mukesh D.Ambani. Navi Mumbai SEZ Pvt. Ltd., Mumbai SEZ Ltd. versus Securities and Exchange Board of India dated 4th December 2023. The Hon'ble Securities Appellate Tribunal have held in their judgment that "There is a distinction between "offence" and "contravention". Consequently, one has to see the intention of the Parliament when it uses the word "offence" or where it uses the word "contravention". Further, it was also discussed that, "We find that parliament was conscious of the usage of the two words "contravention" and "offence" in the SEBI Act and consciously chose to replace "offence" with "contravention" explicitly, in order to enlarge the scope of Section 27". It is evident that the Securities Appellate Tribunal, Mumbai was not concerned with the Private Warehouse Licensing Regulations, 2016 enacted under the Customs Act, 1962, and therefore, the issue of the scope and meaning of the expression "penalised for an offence under the Act' used in the Regulation 3(2)(c) of PWLR, especially in the light of the Regulation 3(2)(b), did not arise before it. As such the case is irrelevant to the present case.

18.3 Another case relied upon by M/s Bhagwati is the Final Order No. 40621/2023 dated 31.07.2023 passed by the Hon'ble CESTAT, Chennai in case of M/s Flemingo DFS Private Limited Vs Commissioner of Customs (Import),

Chennai, wherein three show cause notices were issued to M/s Flemingo DFS Private Limited. In all the cases, matter reached finality and were decided in favour of the appellant. In such circumstances, the Hon'ble CESTAT has held in the para 7 of the Order that "From the facts placed before us, the allegations raised in the Show Cause Notice are no longer live or exist. In such circumstances from the discussions made above, the department cannot deny the request for renewing the license. So also the order for cancellation of the license cannot survive". It is readily evident that the present case is not such a case where M/s Bhagwati has succeeded in getting the order in their favour. On the contrary, in the present case, the allegations raised in the Show Cause Notice are not only live /existing rather the Order- in-Original No. 66/Commissioner/DDN /2017 Dated 04.10.2017 wherein a penalty of Rs. 4,45,47,063/- (Rs. Four Crore Forty Five Lakh Forty Seven Thousand and Sixty Three Only) was imposed upon M/s Bhagwati under Section 114A of the Customs Act, 1962 has been upheld by the Hon'ble CESTAT, New Delhi vide Final Order No. 50836/2018 Dated 20.02.2018, and the appeal which M/s Bhagwati have filed before the Honble Supreme Court against the said Final Order is pending for final decision. As such the case relied upon by M/s Bhagwati (Final Order No. 40621/2023 dated 31.07.2023 passed by the Hon'ble CESTAT, Chennai in case of M/s Flemingo DFS Private Limited Vs Commissioner of Customs (Import), Chennai) is distinguishable on facts and do not support the contention of M/s Bhagwati."

4.3 In the present case the only issue involved is in respect of interpretation of Regulation 3 (2) of the PWLR, which provides for the conditions under which the Licence under Section 58 of the Act, could not have been issued to the appellant. Impugned communications after analysis of the said Regulation has concluded that in case where penalty has been imposed under Section 114A of the Customs Act, 1962, the case would be

covered under Regulation 3 (2) (c) and appellant is not eligible for the grant of Licence under Section 58.

4.4 Appellant have submitted by relying on the provisions of General Clauses Act, 1897 (Act X of 1897) to argue that the word offence used in clause 3 (2) (c) refers to offences which are punishable as per the provisions of Section 132, 133, 134 & 135 of Customs Act, 1962, and would not be in respect of the other contraventions for which the penalties have imposed under other provision of the Customs Act, 1962. We are not impressed by the said argument of the appellant. A constitutional bench (five judges) of Hon'ble Supreme Court has in case of Maqbool Hussain [AIR 1953 SUPREME COURT 325=1983 (13) E.L.T. 1284 (S.C.)] observed as follows:

> *"The question that arises for our determination in this appeal is whether by reason of the proceedings taken by the sea Customs Authorities the appellant could be said to have been prosecuted and punished for the same offence with which he was charged in the Court of the Chief Presidency Magistrate, Bombay. There is no doubt that the act which constitutes art offence under the Sea Customs Act as also an offence under the Foreign Exchange Regulation Act was one and the same, viz., importing the gold in con- travention of the notification of the Government of ,India dated the 25th August, 1948. The appellant could be proceeded against under section 167(8) of the Sea Customs Act as also under section 23 of the Foreign Exchange Regulation Act in respect of the said act. Proceedings were in fact taken under section 167(8) of the Sea Customs Act which resulted in the confiscation of the gold. Further proceedings were taken under section 23 of the Foreign Exchange Regulation Act by way of filing the complaint aforesaid in the Court of the Chief Presidency Magistrate' Bombay, and the plea which was taken by the accused in bar of the prosecution in the Court of the Chief Presidency Magistrate, was that he had already been*

prosecuted and punished for the same offence and by virtue of the provisions of article 20(2) of the Constitution he could not be prosecuted and punished, again.

The word offence has not been defined in the Constitution. But article 367 provides that the General Clauses Act, 1897 (Act X of 1897), shall apply for, the interpretation of the Constitution. Section 3(37) of the General Clauses Act defines an offence to mean any act or omission made punishable by any law for the time being in force and there is no doubt that both under the provisions of section 167 (8) of the Sea Customs Act and section 23 of the Foreign Exchange Regulation Act the act of the appellant was made punishable and constituted an offence. In order however to attract the operation of article 20(2) the appellant must have been prosecuted and punished for the same offence when proceedings were taken by the Sea Customs Authorities. The High Court did not go into the question as to whether the appellant was prosecuted when proceedings were taken before the Sea Customs Authorities. It considered the question of punishment in the first instance and thought it necessary to arrive at a' finding as to the ownership of the confiscated gold before it could consider the application of the appellant. In the opinion of the High Court the appellant could be said to have been punished only if it were established that he was the owner of the confiscated gold. If he was the owner, the confiscation was a punishment, which would not be so if he was not the owner of the gold. This question of the ownership of the gold was not in our opinion material. The gold was found in the possession of the appellant when he landed at the Santa Cruz airport. The appellant was detained and searched by the Customs Authorities and the gold was seized from his person. Proceedings under section 167(8) were taken by the Customs Authorities and after examining witnesses an order was passed on the 19th December, 1949, confiscating the gold and giving an

option to the owner to pay a fine of Rs. 12,000 in lieu of such confiscation under section 183 of the Sea Customs Act. Copy of this order was forwarded to the appellant and for all practical purposes the appellant was treated as the owner of the confiscated gold. …..

The question whether the Sea Customs Authorities when they entertained proceedings for confiscation of the gold in question acted as a judicial tribunal has got to be determined in accordance with the above tests. The Sea Customs Act, 1878, 'was enacted to consolidate and amend the law relating to the levy of sea customs duties. The hierarchy of the officials are the Customs Collector, who is the officer of Customs for the time being in separate charge of a custom house, the Chief Customs Officer who is the Chief Executive Officer of the Sea Customs for a port and the Chief Customs Authority which is the Central Board of Revenue. Sections 18 and 19 enact prohibitions. and restrictions on importation and exportation of goods and section 19(a) provides for detention and confiscation of goods whose importation is prohibited. After making various provisions for the levy of sea customs duties, Chapter XVI enacts offences and penalties and several offences mentioned in the first column of the schedule to section 167 are made punishable with penalties mentioned in the third column thereof. Item 8 relates to the offence committed by the importation of goods contrary to the prohibition or restriction imposed in that behalf under sections 18 and 19 of the Act and penalty prescribed for such an offence is:-

> *" Such goods shall be liable to confiscation ; any person concerned in any such offence shall be liable to a penalty not exceeding three. times the value of the goods, or not exceeding one thousand rupees."*

Chapter XVII prescribes the procedure relating to offences, appeals, etc. Powers of search are given to the officers of

customs but provision is made that a person about to be searched can, require the officer to take him previous to search before the nearest Magistrate or Customs Collector. Search warrant can only be issued by the Magistrate and can be executed in the same way and has the same effect as a search warrant issued under a law relating to criminal procedure. Powers are also given to the officers of Customs to arrest persons reasonably suspected of having committed an offence under the Act but the person arrested is to be forthwith taken before the nearest Magistrate or Customs Collector. The Magistrate is entitled either to commit such person to jail or order him to be kept in custody of the police for such time as is necessary to enable the Magistrate to communicate with the proper officers of Customs. No such power is given to the Customs Collector. Section 181(A) also provides for the detention of packages containing certain publications imported into the States. Section 182 provides that except in the case of certain offences therein mentioned which involve proceedings before a Magistrate confiscation, increased rate of duty or penalty can be adjudged by the Customs Authorities therein mentioned and section 183 provides for option to be given to the owner of the goods confiscated to pay in lieu of confiscation such fine as the officer thinks fit, Section 186 provides that the award of any confiscation, penalty or increased rate of duty under the Act by an officer of Customs is not to prevent the infliction of any punishment to which the person affected thereby is liable under any other law. An appeal is provided under section 188 from a decision or order of the officer of Customs to the Chief Customs Authority who is thereupon to make such further enquiry and pass such order as he thinks fit confirming, altering or annulling the decision or order appealed against. Section 191 provides for a revision by the Central Government on the application of a person aggrieved by any decision or order

passed by an officer of Customs or the Chief Customs Authority from which no appeal lies. Section 193 provides for the enforcement of the payment of penalty or increased rate of duty as adjudged against any person by an officer of Customs. If such officer is not able to realise the unpaid amount from other goods in charge he can notify in writing to any Magistrate within the local limits of whose jurisdiction such person may be, his name and residence and the amount of penalty or increased rate of duty unrecovered and such Magistrate is thereupon to proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

It is clear on a perusal of the above provisions that the powers of search, arrest and detention are given to the Customs Authorities for the levy of sea customs duties and provision is made at the same time for a reference to the Magistrate in all cases where search warrants are needed and detention of the arrested person is required. Certain offences of a serious nature are to be tried only by Magistrates who are the only authorities who can inflict punishments by way of imprisonment. Even though the customs officers are invested with the power of adjudging confiscation, increased rates of duty or penalty the highest penalty which can be inflicted is Rs. 1,000. Confiscation is no about one of the penalties which the Customs Authorities can impose but that is more in the nature of proceedings in rem than proceedings in personam, the object being to confiscate the offending goods which have been dealt with contrary to the provisions of the law and in respect of the confiscation also an option is given to the owner of the goods to pay in lieu of confiscation such fine as the officer thinks fit. All this is for the enforcement of the levy of and safeguarding the recovery of the customs duties. There is no procedure prescribed to be followed by the Customs Officer in the matter of such adjudication and

the proceedings before the Customs Officers are not assimilated in any manner whatever to proceedings in courts of law according to the provisions of the Civil or the Criminal procedure Code. The Customs Officers are not required to act judicially on legal evidence tendered on oath and they are not authorised to administer oath to any witness. The appeals, if any, lie before the Chief Customs Authority which is the Central Board of Revenue and the power of revision is given to the Central Government which certainly is not a judicial authority. In the matter of the enforcement of the payment of penalty or increased rate of duty also the Customs Officer can only proceed against other goods of the party in the possession of the Customs Authorities. But if such penalty or increased rate of duty cannot be realized therefrom the only thing which he, can do is to notify the matter to the appropriate Magistrate who is the only person empowered to enforce payment as if such penalty or increased rate of duty had been a fine inflicted by himself. The process of recovery can be issued only by the Magistrate and not by the Customs Authority. All these provisions go to show that far from being authorities bound by any rules of evidence or procedure established by law and invested with power to enforce their own judgments or orders the Sea Customs Authorities are merely constituted administrative machinery for the purpose of adjudging confiscation, increased rates of duty and penalty prescribed in the Act. The same view of the functions and powers of Sea Customs Officers was expressed in& decision of the Bombay High Court to which our attention was called. (See Mahadev Ganesh Jamsandekar v. The Secretary of State for India in Council [(1922) L.L.R. 46 Bom. 732.]).

4.5 In the case of Additional Coll. Of Cus., Calcutta Vs Sitaram Aggarwala [1999 (110) E.L.T. 185 (S.C.)] a constitutional bench (five judges) of Hon’ble Supreme Court has held as follows:

> ***"4.*** *Section 167(8) of the Act is a penal section the object of which is not only to prevent the evasion of the payment of duties but also to prevent smuggling of goods resulting in the depletion of foreign exchange and jeopardising the economic stability of the country. For that purpose it has to be given an interpretation to cover all those who aid and abet in these nefarious activities whether they are principals or accessories who assist the smugglers or supplement their efforts. The use of the words "concerned in" in Section 167(8) shows that a person may be concerned in the importation of smuggled gold, without being a smuggler himself countravening any of the provisions of the Foreign Exchange Act. Therefore the High Court was right when it observed that if any one is interested or consciously takes any step whatever to promote the object illegally bringing bullion into the country, then even if no physical connection is established between him and the thing brought he will be guilty."*

4.6 In the case of Sachidananda Banerjee, A.C.C., Calcutta Vs Sitaram Agarwala [1999 (110) E.L.T. 292 (S.C.)] another constitutional bench (five judges) of Hon'ble Supreme Court has held as follows:

> *"11. We may briefly indicate the scheme of the Act in order to appreciate the purpose behind Section 167(81). The object of the Act is to provide machinery for the collection inter alia of import duties and for the prevention of smuggling. With that object customs frontiers are defined, (Ch. I); customs officers are appointed with certain powers, (Ch. II); ports, wharves, customhouses, warehouses and boarding and landing-stations are provided for, (Ch. III); prohibitions and restrictions of imports and exports are envisaged, (Ch. IV); levy of and exemption from custom duties and the manner in which it has to be done is provided, (Ch. V); drawbacks i.e. refunds are provided in certain circumstances, (Ch. VI); arrival and*

departure of vessels is controlled, (Ch. VII and Ch. VIII); provision is made for the discharge of cargo, (Ch. IX), and clearance of goods for home consumption (Ch. X); provision is also made for warehousing and transhipment., (Chapters XI, XII); provisions are also made for exportation or shipment and re-landing (Ch. XIII); special provisions have been made relating to spirit (Ch. XIV) and coasting trade (Ch. XV). Then comes Ch. XVI dealing with offences and penalties. Offences enumerated in Ch. XVI are of two kinds; first there are contraventions of the Act and rules thereunder which are dealt with by customs officers and the penalty for which is imposed by them. These may be compendiously called customs offences. Besides these there are criminal offences which are dealt with by Magistrates and which result in conviction and sentence of imprisonment and/or fine. These two kinds of offences have been created to ensure that no fraud is committed in the matter of payment of duty and also to ensure that there is no smuggling of goods, without payment of duty or in defiance of any prohibition or restriction imposed under Ch. IV of the Act.

12. It is necessary for our purpose to set out two provisions of Section 167 which is in Ch. XVI. These are Section 167(8) and 167(81). Section 167(8) is in these terms :-

"167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively :-

Offences	*Section of this Act to which Offence has reference*	*Penalties*
"(8) If any goods, the importation or exportation of which is for the time being prohibited or restricted by or	*18 & 19*	*such goods shall be liable to confiscation; and any person concerned in any such*

under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction; or etc. etc.		*offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees."*

Section 167(81) with which we are particularly concerned reads thus:

"(81) If any person knowingly and with intent to defraud the Government of any duty payable thereon, or to evade any prohibition or restriction for the time being in force under or by virtue of this Act with respect thereto acquires possession of, or is in any way concerned in carrying, removing, depositing harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or which are chargeable with a duty which has not been paid or with respect to the importation or exportation of which any prohibition or restriction is for the time being in force as aforesaid; or *Xx xx xx*	*General*	*such person shall on conviction before a Magistrate be liable to imprisonment for any term not exceeding two years or to fine, or to both;"*

It will be seen that Section 167(8) deals with what we have called customs offences while Section 167(81) deals with criminal offences. *It is well-settled by the decisions of this Court that goods which have been imported against the prohibition or restriction imposed under Ch. IV of the Act are liable to confiscation at any time after import and this liability extends even in the hands of third persons who may not have had anything to do with the actual import. So long as it is proved that the goods had been imported against the restrictions imposed under Chapter IV, the goods remain liable to confiscation whenever found even if this is long after the import is over and even if they are in possession of persons who had nothing to do with the actual import. It is also well-settled by the decisions of this Court that the second part of the penalty relating to any person applies only to a person*

concerned in the importation or exportation of the goods and does not apply to a person found in possession of the smuggled goods who had nothing to do with the importation or exportation thereof : (see Shivanarayna Mahato v. Collector of Central Excise and Land Customs) C.A. 288 of 1964, decided on August 14, 1965."

4.7 In case of Sharad Gandhi [Order dated February 27, 2019 in Criminal Appeal No(s).174 OF 2019] Hon'ble Supreme Court after taking note of the observations made by constitutional bench in case of Sitaram Aggarawala (para 4.6), observed as follows:

"63 …….

Thus, this Court has held that there are custom offences and criminal offences. The criminal offences were dealt with by the Magistrate which may culminate in conviction and imposition of imprisonment and or fine. Thus, this being the scheme of the Sea Customs Act, when Section 5 of the Antiquity (Export Control) Act, 1947 provided that prosecution for contravening Section 3 of the said Act would be without prejudice to the imposition of penalties and ordering confiscation the word 'penalty' could take in both the customs offences and also the criminal offences. If it is interpreted as embracing the criminal offences then the word 'penalty' would also embrace within its scope penalty by way of imprisonment or fine imposed for the commission of a criminal offence after a prosecution before the Magistrate.

64. We may notice that under the Customs Act 1962, penalties and confiscation fall under Chapter XIV. Penalties as contained in Chapter XIV would correspond to customs offences in the Sea Customs Act, 1878. As far as the criminal offences are concerned, they are separately dealt with under Chapter XVI. Yet the legislature has, in fact, chosen

to repeat the word 'confiscation and penalty' when it drafted Section 25 of the Antiquities Act."

Thus we find that Hon'ble Supreme Court has categorically held in the above decisions that the penalties have been prescribed in scheme of Custom Act, 1962 both for Custom Offences (Chapter XIV) and for Criminal Offences (Chapter XVI). Thus we have no hesitation in holding that the word **offence** referred in Regulation 3 (2) (b) of the PWLR is without any qualification referring to both Custom Offences and Criminal Offences prescribed by the Custom Act. The decisions relied upon by the appellant in the following cases taking contrary view, without reference to the above binding decisions of Hon'ble Supreme Court, cannot be treated as binding precedent.

- Deepak Fertilisers and Chemicals Corporation Limited [2025 (393) ELT 631 (Guj)] (para 19-22, 25,26)
- Kundan Care Products Ltd. [Final Order No.56198/2024 dated 31st July 2024] (para 34, 35 and 40)
- Mumbai Travel Retail Private Limited [Final Order No.40531/2025 dated 9th May 2025] (para 29-35)

4.8 Appellant have submitted that just because penalty has been imposed upon him under Section 114A, the interpretation being put on the Regulation 3 (2) (b) will have deleterious impact on his conducting the business, if he is denied the licence under Section 58. In the present case penalty imposed in the departmental quasi judicial proceedings admittedly have been upheld by this tribunal. Decision of tribunal being final fact finding body in any matter should be respected. It is not the case where the matters were pending before the quasi judicial authority or appellate authority. When custom authorities grant any license a lot of trust is expressed in the person to whom it is granted on the basis of his antecedents. When final fact finding authority has upheld the penalty imposed upon the appellant then the case of appellant cannot be considered to be covered by the decision of Hon'ble Gujarat High Court in case of Deepak Fertilizers.

4.9 Further appellant have argued that the penalty imposed upon them under Section 114A, is for contravention and cannot be said to be penalty for fraud etc., for which the license under Section 58 can be denied. We do not find any merits in this argument also. Hon'ble Supreme Court has in the case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)] while specifying the nature of penalty under Section 11AC of Central Excise Act, 1944 which pari material with Section 114A of the Act, observed as follows:

> *17. The main body of Section 11AC lays down the conditions and circumstances that would attract penalty and the various provisos enumerate the conditions, subject to which and the extent to which the penalty may be reduced.*
>
> *18. One cannot fail to notice that both the proviso to sub-section 1 of Section 11A and Section 11AC use the same expressions : "....by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,...". In other words the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty. It, therefore, follows that if the notice under Section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under Section 11A(2) there is a legally tenable finding to that effect then the provision of Section 11AC would also get attracted. The converse of this, equally true, is that in the absence of such an allegation in the notice the period for which the escaped duty may be reclaimed would be confined to one year and in the absence of such a finding in the order passed under Section 11A(2) there would be no application of the penalty provision in Section 11AC of the Act. On behalf of the assessees it was also submitted that Sections 11A and*

11AC not only operate in different fields but the two provisions are also separated by time. The penalty provision of Section 11AC would come into play only after an order is passed under Section 11A(2) with the finding that the escaped duty was the result of deception by the assessee by adopting a means as indicated in Section 11AC.

19. From the aforesaid discussion it is clear that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section."

4.10 Hon'ble Supreme Court in case of K.M. Ganatra & Co. [2016 (332) E.L.T. 15 (S.C.)] observed as follows:

"15. In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. - Mumbai)] wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed :-

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent

would be sufficient to invite upon the CHA the punishment listed in the Regulations....”

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed.”

4.11 Before closing the discussion on this topic we will also refer to the following decisions of the Hon’ble Supreme Court and High Court:

- Balkrishna Chagan Lal Soni [1983 (13) ELT 1527 (SC)]

“16. On the proved facts the gold bar is caught in the criminal coils of Section 135, read with Sections 111 and 123, Customs Act, as the High Court has found and little has been made out before us to hold to the contrary.

17. Guilt being established, the fifth act of the tragedy is reached. Social and economic offences stand on a graver footing in respect of punishment. The appellant’s advocate pleads in elimination of the imprisonment that gold of considerable value has been confiscated, that his client has gone out of business (his licence having been cancelled) and the possibility of further mischief is absent, seven years of criminal proceedings have been a long ordeal deterrent enough to inhibit future anti-social adventures, and some jail term he has already undergone. Counsel submits that his client will now turn a new leaf if he is not returned to prison. We decline to be moved by this dubious prospect.

18. The new horizons in penal treatment with hopeful hues of correction and rehabilitation are statutorily embodied in India in some special enactments; but crimes professionally committed by deceptively respectable members of the community by inflicting severe trauma on the health and wealth of the nation—and the numbers of this neo-criminal tribe are rapidly escalating—form a deterrent exemption to humane softness in sentencing.

19. The penal strategy must be formed by social circumstances, individual factors and the character of the crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the country's economy. Smugglers, hoarders, adulterators and others of their ilk have been busy in their under-world because the legal hardware has not been able to halt the invisible economic aggressor inside. The ineffectiveness of prosecutions in arresting the wave of white-collar crime must disturb the judges' conscience. While we agree that penal treatment should be tailored to the individual, in the extreme category of professional economic offenders, incarceration is peculiarly potent. When all is said and done, the offences for which the appellant has been convicted are typical of respectable racketeers who, tempted by the heavy pay-off face the perils of the law and hope that they could smuggle on a large scale and even if struck by the court they could get away with a light blow.

20. Mr. Justice Abhyankar observed in a Bombay case (State v. Drupd AIR 1965 Bom. 6 Para 11 under Section 5, Imports and Exports Control Act :

> *"A serious view must therefore be taken of such offences which show a distressingly growing tendency. The argument that the accused comes from a respectable or high family rather emphasises the seriousness of the malady. If members belonging to high status in life should show scant regard for the laws of this country which are for public good, for protecting our foreign trade or exchange position of currency difficulties, the consequential punishment for the violation of such laws must be equally deterrent. The offences against export and import restrictions and customs are of the species of `economic' crimes which must be curbed effectively."*

21. We endorse this approach. It may not be out of place to notice in this context the observations of the Central Law

Commission Forty-Seventh Report on "The Trial and Punishment of Social and Economic Offences" against light sentences on the score that : (i) the case is one of first conviction; (ii) that the matter has been already dealt with by severe departmental penalty; (iii) that the convicted person is a young man. To the extent to which gold smugglers and other anti-social operators in the field of crime can be given an unhappy holiday in jail, the courts must help the process on conviction, if judicial institutions are not to be cynically viewed by the community. We confirm the sentence."

- N Ashok & Other [1984 (16) ELT 202 (AP)]

  "The question of dealing adequately and swiftly with the economic offences was considered by the Law Commission of India in its Forty-Seventh Report. Dealing with the trial and punishment, the Law Commissioner observed in paragraph 3.13 :

  "3.13. These offences, affecting as they do the health and wealth of the entire community, require to be put down with a heavy hand at a time when the country has embarked upon a gigantic process of social and economic planning. With its vastness in size, its magnitude of problems and its long history of poverty and subjugations, our Welfare State needs weapons of attack on poverty, ill-nourishment, and exploitation that are sharp and effective in contrast with the weapons intended to repress other evils. The legislative armoury for fighting socio-economic crimes, therefore, should be furnished with weapons which may not be needed for fighting ordinary crimes. The damage caused by socio-economic offences to a developing society could be treated on a level different from ordinary crimes. In a sense, anti-social activities in the nature of deliberate and persistent violations of economic laws could be described as extrahazardous activities, and it is in this light that we approach the problem."

9. It was also observed by the Law Commission that "since the casuality is the nation's welfare, it is these offences which really deserve the name of `public welfare' offence. The Commission recommended for the Constitution of Special Courts for the trial of these offences presided ever by a District Judge of a senior cadre. The Commission further recommended that `only a particular Judge in an area may try these offences, so that he may develop the expertise necessary and also acquire familiarity with the special features of these offences." It was observed :

"The administration and enforcement of these offences requires much more than a knowledge of general criminal law and procedure. It presupposes an acquaintance with some of the nuisance, a grasp in death of the undercurrents of the world of racketeers and other special features of organised crime."

Appeals, in the opinion of the Commission, should only lie to the High Court to secure speedy disposal of the appeals as well as to ensure uniformity in the interpretation of the relevant laws.

10. Therefore, it is necessary to bear in mind, while dealing with the economic offences or `public welfare offences', that they ought to be treated on a level different from ordinary crimes. It is the nation's welfare and economic progress that is the casuality in such crimes. So bearing these things in mind, the legislative armoury has furnished special weapons, such as Section 123 and 11D of the Act, for fighting these welfare offences which affect the health and wealth of the entire community. It is in this light that the Court should approach in evaluating the evidence in cases relating to Public Welfare Offences. ….."

- Gyan Chand Jain [1986 (25) ELT 163 (Mad)]

***"15.** The new horizons is penal treatment with hopeful hues of correction and rehabilitation are*

statutorily embodied in India in some special enactments; but crimes professionally committed by deceptively respectable members of the community by inflicting severe trauma on the health and wealth of the nation - and the numbers of this neo-criminal tribe are rapidly escalating-form a deterrent exemption to humane softness in sentencing.

16. *The penal strategy must be informed by social circumstances, individual factors and the character of the Crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the country's economy smugglers, hoarders, adulterators and others of their like have been busy in their under-world because the legal hardware has not been able to halt the invisible economic aggressor inside. The effectiveness of prosecutions in arresting the wave of white-collar crime must disturb the judge's conscience. While we agree that penal treatments should be tailored to the individual, in the extreme category of professional economic offenders, incarceration is peculiarly potent. When all is said and done, the offences for which the appellant has been convicted are typical of respectable racketeers, who, tempted by the heavy pay-off, face the perils of the law and hope that they could smuggle on a large scale and even if struck by the Court they could get away with a light blow."*

4.12 Regulation 3 (2) of the PWLR has been reproduced in the portions of impugned order reproduced above. Appellant has in his submission sought to state that the situations covered by regulation 3 (2) (b) is with reference to conviction and 3 (2) (c) is in respect of "penalization for an offence". To buttress their argument they have referred to various definitions given in the

Black Law dictionary etc. We have given a thoughtful consideration to the submissions made.

4.13 In the Indian legal system, it is a fundamental principle that an accused is presumed innocent until proven guilty, meaning a sentence cannot be awarded without a formal conviction. Article 20 of the Constitution of India provides as follows:

20. Protection in respect of conviction for offences.—

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) *No person accused of any offence shall be compelled to be a witness against himself.*

4.14 Section 235 of the Code of Criminal Procedure, 1973, deals with judgment of acquittal or conviction in session trials, Section 248 deals with judgment of acquittal or conviction by Magistrates in warrant trial cases and Section 255 deals with judgment of conviction or acquittal in summons triable cases.

"Section 235. Judgment of acquittal or conviction –

(1) After hearing arguments on points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

Section 248. Acquittal or conviction –

(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case, under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of subsection (7) of Section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon;

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub section (2).".

Section 255. Acquittal or conviction –

(1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the

Magistrate is satisfied that the accused would not be prejudiced thereby.".

4.15 From the above provisions of the Constitution and the Code of Criminal Procedure it is quite evident that trial and conviction would necessarily precede the sentence awarding punishment for offence for which the person is convicted. There cannot be any instance of award of punishment for a criminal offence, without conviction. Thus if the Regulation 3 (2) (b) and 3 (2) (c) were to be interpreted in the manner suggested by the appellant, Regulation 3 (2) (b) will become redundant. All the case of punishment/ penalty under 3 (2) (c) will be covered by the Regulation 3 (2) (b). Commissioner has in the impugned communications observed so, and has held that Regulation 3 (2) (b) is in respect of Offences prescribed in Chapter XVI where in after launch of prosecution, the accused is tried in relevant court and if convicted, a sentence is pronounced determining the quantum of punishment. He has held that Regulation 3 (2) (c) necessarily will be in respect of the Custom Offences as per Chapter XIV of the Act. He has further observed that regulation 3 (2) (b) was not brought to the notice of the bench in the case of Kundan Care, and this aspect which goes to the root of matter escaped the consideration of the bench. We are in total agreement with the observations made by the Commissioner. The interpretation placed by the appellant, would definitely make the Regulation 3 (2) (c) redundant simply for the reason that all the cases then of 3 (2) (c) will be covered by the Regulation 3 (2) (b). It is settled position in law that any statute should be looked as whole and meaning given to every word used by legislature while enacting the same. No provision could be made redundant by interpreting the statute. In case of Sankar Ram And Co vs Kasi Naicker And Others [2003 (11) SCC 699] Hon'ble Supreme Court observed as follows:

" …..It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In

the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having regard to the object and purpose sought to be achieved by it. A Constitution Bench of this Court in Jaipur Zila Sahakari Bhoomi Bank Ltd. Vikas vs. Shri Ram Gopal Sharma and Ors. [JT 2002 (1) SC 182] while interpreting and considering the effect of proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 in para 13 observed – "The proviso to Section 33(2)(b) as can be seen from its very unambiguous and clear language, is mandatory..... Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer..... The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it."

4.16 Maharashtra Land Development Corporation & Ors.[Order dated 11th November 2010 in Civil Appeal No 2147-2148 of 2004]

"42…….Every word and phrase of the Act is to be understood in its context and must be given significance so that they are not rendered redundant….."

4.17 Hon'ble Supreme Court has in case of Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)] observed as follows:

13. We may passingly, albeit, briefly reiterate the general principles of interpretation, which were also adverted to by both the counsel. In his treatise, 'Principles of Statutory Interpretation' Justice G.P. Singh, lucidly pointed the importance of construction of statutes in a modern State as under :

> *"Legislation in modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite 'referents' are bound to be, in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction."*

14. An Act of Parliament/Legislature cannot foresee all types of situations and all types of consequences. It is for the Court to see whether a particular case falls within the broad principles of law enacted by the Legislature. Here, the principles of interpretation of statutes come in handy. In spite of the fact that experts in the field assist in drafting the Acts and Rules, there are many occasions where the language used and the phrases employed in the statute are not perfect. Therefore, Judges and Courts need to interpret the words.

15. In doing so, the principles of interpretation have been evolved in common law. It has also been the practice for the appropriate legislative body to enact Interpretation Acts or General Clauses Act. In all the Acts and

Regulations, made either by the Parliament or Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in General Clauses Act are to be necessarily kept in view. If while interpreting a Statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on General Clauses Act. Notwithstanding this, we should remember that when there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessarily refer to the provisions of statute.

16. The purpose of interpretation is essentially to know the intention of the Legislature. Whether the Legislature intended to apply the law in a given case; whether the Legislature intended to exclude operation of law in a given case; whether Legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids and external aids which are tools for interpreting the statutes.

17. The long title, the preamble, the heading, the marginal note, punctuation, illustrations, definitions or dictionary clause, a proviso to a section, explanation, examples, a schedule to the Act etc., are internal aids to construction. The external aids to construction are Parliamentary debates, history leading to the legislation, other statutes which have a bearing, dictionaries, thesaurus.

18. It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts

should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. In this connection, the following observations made by this Court in District Mining Officer v. Tata Iron and Steel Co., (2001) 7 SCC 358, may be noticed :

> *"… A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar*

problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed..."

19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

20. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose [Assistant

Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa, 1995 (6) SCC 355]. Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.

21. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution [265. Taxes not to be imposed save by authority of law - No tax shall be levied or collected except by authority of law.] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.

22. At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the Courts sometimes have made

strict interpretation subordinate to the plain meaning rule [Mangalore Chemicals case (Infra para 37).], though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory.

23. Next, we may consider the meaning and scope of 'strict interpretation', as evolved in Indian law and how the higher Courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) 'strict interpretation' is described as under :

> *Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. - Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. - Also termed as close interpretation; interpretatio restrictive.*

See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

> *"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability*

of the statute to the particular case.' Wiliam M. Lile et al., Brief Making and the use of Law Books 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d ed. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense." John Salmond, Jurisprudence 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).

24. As contended by Ms. Pinky Anand, Learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation. The decision of this Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court Chandigarh and Ors., (1990) 3 SCC 682, made the said distinction, and explained the literal rule-

"The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict - literalism into its fold. It may be relevant to note that simply juxtaposing 'strict interpretation' with literal rule'

would result in ignoring an important aspect that is 'apparent legislative intent'. We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, 'strict interpretation' does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then 'strict interpretation' can be implied to accept some form of essential inferences which literal rule may not accept.

25. We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

26. Justice G.P. Singh, in his treatise 'Principles of Statutory Interpretation' (14th ed. 2016 p.-879) after referring to Re, Micklethwait, (1885) 11 Ex 452; Partington v. A.G., (1869) LR 4 HL 100; Rajasthan Rajya Sahakari Spinning & Ginning Mills Federation Ltd. v. Deputy CIT,

Jaipur, (2014) 11 SCC 672, State Bank of Travancore v. Commissioner of Income Tax, (1986) 2 SCC 11 and Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, summed up the law in the following manner -

> *"A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY AND LORD SIMONDS, means : 'The subject is not to be taxed without clear words for that purpose : and also that every Act of Parliament must be read according to the natural construction of its words. In a classic passage LORD CAIRNS stated the principle thus : "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words : "In a taxing Act one has to look merely at what is clearly said. This is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

It was further observed :

> *"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal*

entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation...."

Yet again, it was observed :

"It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, "the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him", [Russel v. Scott, (1948) 2 All ER 1]. The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co. v. Betts, (1928) AC 143]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram, (1969) 3 All ER 215]. It has also been said that if taxing provision is "so wanting in clarity that no meaning is reasonably clear, the Courts will be unable to regard it as of any effect [IRC v. Ross and Coutler, (1948) 1 All ER 616]."

Further elaborating on this aspect, the Learned author stated as follows :

"Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Express Mill v. Municipal Committee, Wardha, AIR 1958 SC 341]. If the Legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such

arises [CIT v. Jalgaon Electric Supply Co., AIR 1960 SC 1182]. But equitable considerations are not relevant in construing a taxing statute, [CIT, W.B. v. Central India Industries, AIR 1972 SC 397], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jha v. Expenditure Tax Officer, Hyderabad, AIR 1972 SC 2319]. It is well-settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the Legislature to determine the same [Kapil Mohan v. Commr. of Income Tax, Delhi, AIR 1999 SC 573]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the Court should not concern itself with the intention of the Legislature when the language expressing such intention is plain and unambiguous [State of Madhya Pradesh v. Rakesh Kohli & Anr., (2012) 6 SCC 312]. But just as reliance upon equity does not avail an assesse, so it does not avail the Revenue."

The passages extracted above, were quoted with approval by this Court in at least two decisions being Commissioner of Income Tax v. Kasturi Sons Ltd., (1999) 3 SCC 346 and State of West Bengal v. Kesoram Industries Limited, (2004) 10 SCC 201 [hereinafter referred as 'Kesoram Industries case' for brevity]. In the later decision, a Bench of seven-Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute :

"(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed : it cannot

imply anything which is not expressed : it cannot import provisions in the statute so as to supply any deficiency : (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of Legislature's failure to express itself clearly".

4.18 In view of the discussions as above we find ourselves in agreement with the view expressed in the impugned communications dated 27.03.2025 to the effect that the request of appellant for grant of licence under Section 58 of the Act read with PWLR cannot be allowed.

5.1 Appeals are dismissed.

(Order pronounced in open court on-12 December, 2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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