

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50118 of 2017

(Arising out of order-in-original No. 208/INT/DGCEI/HQ/2015 /9291 dated 29.07.2016 passed by the Additional Director General, DGCEI, New Delhi).

M/s Dharampal Satyapal Limited

Appellant

C-6-10, Sector-67, Noida (U.P.)

VERSUS

Commissioner of Central Tax

Respondent

C. R. Building, I. P. Estate
Delhi.

APPEARANCE:

Shri Pramod Kumar Rai & Shri Jayant Kumar, Advocates for the appellant
Shri Sanjay Jain, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.50024/2020

DATE OF HEARING: 09.10.2019
DATE OF DECISION: 09.01.2020

ANIL CHOUDHARY:

The appellant, Dharampal Satyapal Ltd. ('DSL' for short) is engaged in the manufacture of perfumery compounds, pan masala, mouth freshener, milk products, etc. having their manufacturing units at Delhi and Noida. Noida unit (Flavour Division) is located at C-11/12/13, Sector-67, Noida having Central Excise Registration No.AAACD0132 HEM046 under Noida Commissionerate, and the Delhi Unit (Perfumery Division) is located at 98, Okhla Phase-III, New Delhi, falling under Delhi Commissionerate having Registration

No.AAACD0132HXM020. To manufacture the dutiable finished products, the appellant receives several inputs and avails cenvat credit on the eligible inputs received along with the duty paying documents. The appellant maintains proper records of the transactions including availing of the cenvat credit and its usage, as required under the provisions of law.

2. The raw materials received by the Flavour Division mainly are - Henna, Attar Mehandi, F.Fbase, G.R. Compound, Sandal Wood Oil/Compound, etc. The appellant filed regular returns with the Department showing their duty liability on the output and their cenvat credit eligibility. The records of the appellants are audited by the Central Excise Authorities from time to time.

3. The Directorate General of Central Excise Intelligence ('DGCEI' for short) initiated an investigation in October/ November, 2015 in respect of CENVAT credit availment under Cenvat Credit Rules, 2004 by the appellant at its both locations. DGCEI alleged that the appellant company is claiming inadmissible cenvat credit on inputs received by it because of irregularities committed by its suppliers and discrepancies found at the supplier end.

4. During the course of investigations in October/November, 2015, DGCEI searched residential premises of the Senior Officers of the appellant company including Vice Chairman's residence apart from searching factory premises. The officers apart from seizing the business related documents, also seized personal mobile phones of the family members including WIFI and also intercepted the emails by taking the pass word and email id. of all family members. The entire cash of Rs.44,67,500/- found at Vice Chairman's ('VC' for short)

residences was seized. The CCTV at the residence of the VC was switched off by the officers for the reasons best known to them. The appellants states that Panchnama does not reflect the true incidents which took place. Although the explanation of the cash available at home was given by Mr. Rajeev, but the same was not taken on record to justify the seizure of the cash.

Appellant have been coerced by DGCEI to make deposits during the investigation without issuing SCN and without addressing its legal rights as tax payer. DGCEI in order to harass the appellant --

- (i) Searched the residential premises of senior office bearers of appellant such as VC's residence apart from searching factory premises.
- (ii) DGCEI officers apart from seizing business related documents also seized personal mobile phones of all family members and also the email id and password of all family members.
- (iii) Officers also seized entire cash of rupees 44,67,500/- available at VC's residence for their day to day expenses, which was having no connection with the case investigated.
- (iv) Officers of DGCEI were very rude and abusive, they never offered their personal search, ransacked the entire house, did not involve independent panchas, and forced family members to disclose passwords of personal email ids. All these illegal activities of officers would have been recorded in the CCTV installed at VC's residence, however officers in order to conduct the search in illegal and arbitrary manner as per their whims and fancies switched off the CCTV of the house and fact of switching off the CCTV is not reflected in panchnama.

- (v) Panchnama does not reflect a true narration of incidents which took place. The explanation of cash available at home given by Mr. Rajeev that it is cash at hand properly withdrawn from bank and is lying for expenses to be done in the festive reason is not taken on record as officers were adamant on seizing the cash.
- (vi) The officers of DGCEI issued indiscriminate summons one after another and recorded involuntary statement of employees of appellant, suppliers of appellant and other persons connected with the transaction by resorting to beating, mental torture and by applying undue pressure which is evident from following.
 - (a) Mr. Rajesh Kumar who visited the office of DGCEI on 30.11.2015 on his own under a summons, was detained for long hours and was arrested in the early hours of 1.12.2015.
 - (b) FIR dated 02.02.2016 registered under the order of Metropolitan Magistrate dated 01.02.2016.
 - (c) Anticipatory bail order dated 07.01.2016 of Mr. Vinod Kumar Gupta narrating the incident of beating of his son and accountant by officers of respondent.
 - (d) Petitioner has been coerced to make a deposit in crores without issuance of SCN and without adjudication of case.
 - (e) The petitioner has written several letters to DGCEI seeking relief from tortuous and illegal investigation, but has not got any relief.

5. That under the continued pressure and undue influence exerted by the officers, the appellant deposited Rs. 75 crores and further in the interest of survival of their business, the various stake holders

including employees and to buy mental peace from the harassment and defamation being faced, the appellant agreed to go for settlement of the matter under Section 11 AC(1) (d) of the Central Excise Act, 1944 ('Act' for short) read with CBEC Circular /Instructions F.No.137/46/2015-ST dated 18.08.2015.

6. The appellant by its letter dated 21.04.2016 addressed to the DGCEI sought some clarifications with respect to CBEC instructions dated 18.08.2015. The appellant received reply dated 25.04.2016 advising them to go through the CBEC instruction and the same to be read with the provisions of the Section 11 AC (1)(d) of the Act which are explicit. The appellants by their letter dated 23.05.2016 decided to opt for the settlement Scheme and intimated their offer to the DG(DGCEI) to pay/deposit the cenvat credit objected to by the Revenue, subject to complete closure of all the proceedings in the following words:-

"Considering the intentions of the CBEC and provisions/directions as are contained in the above instructions, we with a view to overcoming investigating hassles, which are distracting our management from their most important duty of attending to the business and its growth and also without in any manner admitting of any wrong doing, fraud or suppression with knowledge at our end. In order to 'buy peace' and avoid devoting time, energy and financial recourses we are desirous of availing the same. Till date we have already deposited Rs. Seventy Five Crore Fourty Four Lacs Sixty Seven Thousand Five Hundred in this case. We are further depositing an amount of Rs. Ten Crore, which may be adjusted towards duty/ penalty. We further request your honour to meet financial commitments laid down in the instructions within a definite time frame.

We are of the view and have also represented to CBEC to this effect vide our letter dated 2nd May 2016 that all immunities from all proceedings including prosecution will extend to company as well as Directors and others.

We also urge that the matter may kindly be taken up with CBEC so as to bring other parties (being investigated) within the purview of immunities, once the same is granted to us under the above instructions. This will be in consonance with the existing position on the customs side, as well as per various rulings."

(emphasis supplied)

7. In response to the letter dated 23.05.2016 by the appellant, they received reply no.208/INT/DGCEI/HQ/2015 dated 20.06.2016 stating that the appellant has received invoices only without physically receiving the inputs/goods, which is quoted herein for clarity:

“Please refer to your company’s letter dated 23.05.2016, wherein you have referred to the above instructions of CBEC and volunteered to pay the entire duty, interest and penalty @ 15% of duty.

2. As requested by you, the duty liability of M/s Dharampal Satyapal Ltd. (Flavour Division) at (I) C-11-12-13, Sector-67, Noida, UP (Central Excise Registration No. AAACD0132HEM046) and (ii) 98, Okhla Industrial Estate Phase-III, Behind Modi Mill, New Delhi (Central Excise Registration No. AAACD0132HXM020), arising out of irregular availment of cenvat credit on the strength of invoices issued by 13 raw material suppliers, without actual receipt of goods, is furnished in the enclosed annexure ‘A’, supplier-wise. The inadmissible cenvat credit availed by M/s Dharampal Satyapal Ltd., Okhla, New Delhi and Noida, U.P., has been quantified on the basis of cenvatable invoices and cenvat credit registers.

3. In view of the above, you may discharge the entire Central Excise duty liability of Rs. 95,38,33,657/- (including Rs. 85 crore already deposited for both the units) alongwith applicable interest and penalty of Rs. 14,30,75,048/- @ 15% of the duty amount of Rs. 95,38,33,657/- on or before 22.06.2016 (i.e. within 30 days of date of receipt of your letter dated 23.05.2016, in order to avail the benefit of CBEC Circular No. 137/46/2015-Service Tax dated 18.08.2015.”

(emphasis supplied)

8. The appellant being not in agreement with the letter dated 20.06.2016 of the DGCEI, did not comply with the same and lodging their disagreement/specifically asserted that they have physically received the inputs along with the invoices showing the payment of duty, issued by the suppliers. The said letter reads as follows:-

“Kindly refer to our letter dated 23.05.2016 vide which we offered to settle the issue in terms of CBEC reference F. No. 137/46/2015-Service tax dated 18.08.2015 subject to

quantification of duty, interest and penalty and your letter dated 20.06.2016. As mentioned in our letter as above and also in our version given to the Department goods were duly received by us and cenvat credit was taken on the strength of documented invoices by us. However, as orally explained by the DGCEI, some discrepancies and irregularities had taken place at the end of the suppliers, for which the reversal of cenvat credit is sought by the Department from us. We, therefore, in order to purely avoid the earliest are ready to pay the duty without going into the details of inadmissibility of otherwise of cenvat credit.

In view of and without prejudice to above stated position and in consonance of our letter dated 23.05.2016, we shall be paying the balance duty interest and penalty as communicated by you within 30 days of your communication dated 20.06.2016. Since we have done considerable amount of reversal of cenvat credit/ payment of duty during investigation, we, therefore, are giving our unit wise appropriation of the same keeping in mind that cenvat credit of one unit cannot be appropriated against the other but sums paid during investigation through PLA are liable to be appropriated as per our appropriation. We would expect your cooperation and help for adjustment of such amount. Hope no further correspondence will be required and matter can be resolved through oral communications and on the basis of discussions held with you after your above reference dated 20.06.2016."

(emphasis supplied)

9. Thereafter, the appellants deposited the balance amount as advised by the DGCEI for conclusion of the dispute raised by the Revenue as regards the cenvat credit amounting to Rs.95,38,33,657/- (in respect of both the units at Delhi and Noida), by their letter dated 20.07.2016 mentioned therein that they have been informed of their duty liability, interest and penalty on account of irregular cenvat credit (due **to procedural lapse of the suppliers**). **Further, referring to the earlier correspondence stated that according to the grounds and evidences of procedural lapse, shown by the Sr. Intelligence Officer, DGCEI, and waive their right to a written 'show cause notice', in terms of the CBEC instructions dated 18.08.2015.** It was specifically mentioned that they have made the payment of amount of cenvat credit in dispute, interest and penalty,

as quantified by the Department and there is excess payment of Rs.14,55,97,964/-, with respect to their Noida Unit, which was prayed to be taken forward for future adjustment towards duty payable. **It was specifically prayed that all the proceedings against the connected suppliers and co-noticees may be closed as already assured and no prosecution may be filed against any person.** Further, the prayer was made to advise the date when the appellant could send their representative to collect all the case records/evidences, collected by the Revenue. (emphasis supplied)

10. That by letter dated 22.07.2016 addressed to the Additional Director General, DGCEI, the appellants stated that as informed by DGCEI officers, while doing verification of the RG-23 A Part-II register for the amount deposited by us, as mentioned by their letter dated 20.07.2016, it has been orally informed that in addition to the quantification given by the Department on 20.06.2016, 4 more entries were observed, which were left in the quantification provided by the DGCEI vide its letter dated 20.06.2016. The total cenvat credit involved with respect to the receipt of the inputs, perfumery compound, from Kanpur Perfumers, amounting to Rs.62,50,000/- towards supply of goods vide invoices dated 28/29.10.2015, the appellant agreed to pay this amount also by requesting to adjust this amount from the excess paid amount of Rs.14,55,97,964/-, as mentioned in their earlier letter dated 20.07.2016.

11. Thereafter, the Joint Director (INT), DGCEI issued letter dated 29.07.2016, F.No.208/INT/DGCEI/HQ/2015, addressed jointly to the Commissioner, Noida-I, Central Excise Commissionerate, Noida and

the Commissioner, Delhi-II, Central Excise Commissionerate, New Delhi, which reads as follows:-

“Subject:- ‘Closure of proceedings’ (involving recovery of duty, interest and penalty of total Rs.134.86 crore) against the two units of M/s. Dharampal Satyapal Ltd. (Flavour Division) at Noida UP and Okhla, New Delhi, in terms of CBEC Circular F.No.137/46/2015-ST dated 18.08.2015.

This office has investigated a case of availment of irregular and inadmissible CENVAT credit by M/s.Dharampal Satyapal Ltd. (Flavour Division) having two units, one at C-11, 12,13, Sector-67, Noida (Central Excise Registration No.AAACD0132HEM046), falling under Noida-1, Commissionerate of Central Excise, and the other at 98, Okhla Industrial Area, Phase-III, New Delhi (Central Excise Registration no.AAACD0132HXM020), falling under Delhi-II, central Excise Commissionerate (both units together hereinafter referred to as M/s.DSL). M/s.DSL are engaged in the manufacture and clearance of excisable goods, namely, Flavours & Fragrances etc. falling under Chapter 33 of the First Schedule to the Central Excise Tariff Act, 1985.

2. On the basis of specific information that **M/s.DSL were taking inadmissible CENVAT credit on the basis of invoices of some suppliers of sandalwood oil /compound and other raw material ‘without physical receipt of such inputs in their factories’** searches were conducted on 29.10.2015 and 03.11.2015, by the officers of DGCEI(HQ) at the factories of M/s.DSL and their suppliers as well as other related premises and various incriminating documents related to irregular availment of inadmissible cenvat credit by M/s.DSL, were recovered. Statements of the concerned persons were also recorded under Section 14 of the Central Excise Act, 1944.

3. During the investigation, **it was revealed total CENVAT credit of Rs.96,00,83,657/- taken by M/s.DSL on the basis of the invoices of 13 suppliers/manufacturers/dealers** (M/s. Prayag Industries, Roorkee; M/s. Shiv Shakti Industries, Haridwar; M/s.Saraswati Industries, Roorkee; M/s.Kanpur Perfumes Pvt. Ltd., Kanpur; M/s.Shivam Industries, Kanpur; M/s.S.B. International, Udham Singh Nagar, Uttarakhand; M/s. Indian Perfumes Pvt. Ltd., Lucknow; M/s. Hindustan Industrial products, Lucknow; M/s.W.A. Shah Enterprises (P) Ltd., Kanpur; M/s. India Sales International, Kanpur; M/s. Al Sana Fragrances, Delhi; M/s. Naresh International, Delhi and M/s. Sangarm Industries, Burhanpur, M.P.) **during the period May, 2012 to 31.10.2015, was improper and in violation of Rules 3(1), 4 and 9 of the CENVAT Credit Rules, 2004, as only invoices were received only without physical receipt of goods/inputs.** These Rules prescribe that CENVAT Credit is admissible only when inputs cleared from the factory of the input manufacturer are received in the factory of the manufacturer of the final products.

4. On being explained the scope of the DGCEI investigation and evidences unearthed, establishing availment of inadmissible CENVAT Credit, M/s.DSL, vide letter dated 23.05.2016, expressed their desire to avail the benefit contained in CBEC's Circular F.No.137/46/2015-Service Tax dated 18.08.2015, and requested for the computation of their duty, interest and penalty liability.

5. The computation for the period May, 2012 to 30.10.2015, showed that M/s. DSL Noida and Delhi had taken inadmissible CENVAT credit to the tune of Rs.41,11,11,971/- and Rs.54,89,71,686/- respectively on the basis of the invoices of the said 13 suppliers. The duty, interest and penalty liability in respect of both the units was communicated to them vide this office letter of even no. dated 20.06.2016. A Master Chart (page 1 to 4) showing their duty, interest and penalty @ 15% of duty amount) @ 15% of duty amount) liability is enclosed as Annexure-4.

6. M/s.DSL vide their letters dated 20.07.2016 & 22.07.2016 (enclosed as Annexure-B) intimated the deposit particulars of the duty, interest and penalty in respect of both the units, as mentioned below:-

Total Recovery on account of inadmissible CENVAT Credit from M/s DSL (in Rs.)						
Name of the party	Duty payment by Cenvat credit	Duty payment by cash through challan	Total duty payment	Interest payment	Penalty payment in terms of CBEC circular date 18.08.15	Grand total (duty + Interest + Penalty)
DSL, Noida	351111971	60000000	411111971	37008263	61666796	509787030
DSL, Okhla	0	548971686	548971686	207531082	82345753	838848521
Total categorywise	351111971	608971686	960083657	244539345	144012549	1348635551

7. M/s.DSL also waived their right to a written show cause notice and confirmed that the grounds of and the evidences establishing their duty liability, have been explained to them and accordingly, they have paid the duty, interest and penalty in terms of CBEC Circular No.137/46/2015-ST dated 18.08.2015.

8. The proceedings in respect of fraudulent, availment/utilisation of inadmissible CENVAT credit by M/s. DSL to the tune of Rs.96,00,83,657/- (Rs.41,11,11,971/- of Noida Unit & Rs.54,89,71,686/- of Okhla Unit) on the basis of invoices of 13 supplier firms during the period May, 2012 to 30.10.2015 has been concluded in terms of CBEC Circular F.No.137/46/2015-ST dated 18.08.2015. Out of this total CENVAT Credit of Rs.96,00,83,657/-, the unutilized credit to the tune of Rs.35,11,11,971/- taken by M/s. DSL, Noida, on the basis of the invoices of 13 suppliers covered by DGCEI investigation, has been disallowed by debiting/reversing the said amount in their CENVAT credit account and the balance amount of

Rs.60,89,71,686/- has been paid by M/s.DSL, Noida/Okhla in cash.

9. As M/s.DSL have deposited the duty, interest and penalty @ 15% of the duty amount in respect of inadmissible CENVAT credit taken by them on the basis of the invoices of 13 suppliers/manufacturers during the period May, 2012 to 30.10.2015, in terms of CBEC Circular No.137/46/2015-ST dated 18.08.2015, proceedings in respect of such Central Excise Duty, interest and penalty arising out of the investigation against the two units of M/s. Dharampal Satyapal Ltd. (Flavour Division) at C-11,12,13, Sector-67, Noida and at 98, Okhla Industrial Area, Phase-III, new Delhi by DGCEI, Hqrs., New Delhi, have been concluded without issue of show cause notice. It may, however, be noted that the scope of the DGCEI investigation is limited to the inadmissible CENVAT credit availed by M/s.DSL, on the strength of the invoices issued by the aforementioned 13 suppliers/manufacturers only.

10. Further, during the investigation, it has been found that the Noida Unit of M/s.DSL, have debited excess CENVAT credit of Rs.8,47,32,219/- as well as deposited excess duty of Rs.5,35,76,532/- in cash. M/s.DSL, vide their letters 20.07.2015 and 22.07.2015, have requested that they may be allowed to utilize the same for payment of duty in future or the amount may be refunded to them. DGCEI has 'no objection' if the jurisdictional Commissionerate allows M/s.DSL, Noida to re-credit the CENVAT credit of Rs.8,47,32,219/- in their CENVAT credit account and also to utilize the excess cash payment of Rs.5,35,76,532/- against their future duty liability. However, the NOC is accorded for the aforementioned limited purpose only and the adjustment/re-credit, if any, may be allowed following proper procedure. A report in this regard may be forwarded to this office in due course.

11. This issues with the approval of the 'Additional Director General, DGCEI (HQ)', New Delhi." (emphasis supplied)

A copy of the aforementioned letter of closure was also marked to the appellant company for information.

12. The appellant found the aforementioned letter dated 29.07.2016 issued by DGCEI to be in utter disregard and breach of the promise and understanding, as agreed between them. This letter contained following mis-statements/discrepancies –

- (i) Credit was denied on the sole ground of non-physical receipt of inputs and no other ground.

- (ii) It was wrongly mentioned that the appellant has accepted the grounds and waived its right to show cause notice, with respect to its right;
- (iii) The case was not closed in its entirety as prayed by the appellant vide their letter dated 23.05.2016, rather it was limited to only civil liability and that too, credit part alone.

13. Thereafter, it is stated that the appellant wrote several letters to the Department (including letter dated 08.08.2016) stating that the said letter of Revenue dated 29.07.2016, stating wrongly that the appellant have received only invoices without physical receipt of the inputs in their factory, needs to be withdrawn or modified. However, there was no response from the DGCEI. The appellant further by their letter dated 8.2.2017 reasserted their initial offer dated 23.05.2016 stating that they have never admitted any fraud and have actually received the inputs along with the duty paying documents. The appellant has never admitted any fraud and further requested for complete closure of all civil as well as criminal proceedings against the appellant as well as each and every person connected in the matter. However, Revenue by its letter dated 29.07.2017 communicated that the investigations in respect of the appellant with respect to cenvat credit from 13 suppliers has been concluded. According to the appellant, there is no closure of the dispute as the appellant has been insisting all throughout in their oral as well as written communication, that they have received the inputs on which the cenvat credit has been disputed, whereas the DGCEI having been insisting that the appellant has received only the cenvatable documents without receipt of the inputs. Thus, there being variance in the stand of the revenue and that of the appellant/ assessee, there is no settlement of the issue in

terms of the Section 11AC (1)(d) read with CBEC instructions dated 18.08.2015. The appellant have further stated that the revenue till date has not returned all the seized case records, laptops, mobile phone etc., seized from them.

14. The appellant in this appeal has prayed for setting aside the aforementioned communication (Impugned order dated 29.07.2016), and for a declaration that the dispute between the parties in respect of the disputed amount of cenvat credit is not settled and for a further direction to the Revenue to issue a show cause notice for adjudication of the dispute.

15. Ld. Counsel for the appellant company urges that the payments made by them were not voluntary, as under the facts and circumstances, they were coerced by the officers of the DGCEI to agree for the settlement /closure all throughout, taking the stand that they had not received the goods along with the duty paying documents/invoices. Such inputs/goods received in vicinity of panchnama date ,were also found at the time of inspection by the officers. The appellant had only agreed to pay the duty /cenvat credit involved on the disputed invoices, as they were made to understand that there are technical lapses on the part of the suppliers. Ld. Counsel relies on the ruling of the Hon'ble Delhi High Court in the case of **Make My Trip India Pvt. Ltd. Vs. Union of India - 2016 (44) STR 481**, wherein under the similar circumstances, the Hon'ble High Court found that the assessee has made payments under the shadow of criminal intimidation by the Department. Hence, the payments have been made only to avoid further consequences of continued harassment, and payments so made cannot be treated as voluntary

deposits. The Hon'ble High Court observed that when offer is made in the circumstances outlined before a criminal court for payment of alleged service tax arrears, without even a show cause notice issued in this regard, it is evident that the offer is made only to avoid further consequences of continued detention. The High Court further observed that without even a show cause notice being issued and without there being any determination of amount of tax arrears, the resort to the extreme measure of arrest followed by detention was impermissible in law. The said ruling of Delhi High Court was affirmed by the Apex Court by order dated 29.01.2019 in Civil Appeal No.8080802/2018.

16. Ld. Counsel further urges that mere deposit even if voluntary, does not amount to acceptance of grounds/allegations of the Department and does not give right to the Department to retain the money without issuing show cause notice and without proper adjudication. It has been held by the Hon'ble Supreme Court in the case of State of **West Bengal Vs. Mohd. Khalil – (2004) 4 SCC 594**, wherein it has been held that under Tax Laws, there cannot be deemed acceptance or presumption, without sanction of law. It is further urged that the amounts of deposit by an assessee during investigation can be appropriated, only on acceptance of allegation by the assessee in writing along with the quantification. Otherwise, show cause notice has to be issued containing the gist of allegations and after opportunity of hearing, there has to be adjudication under the scheme of the Act. Upon adjudication, if any demand is found payable then only, the deposit/pre-deposits can be adjusted/appropriated. Under the facts of the present case, there is no acceptance of the allegations by the DGCEI, that the appellant has not received the

goods. Thus, there is no conclusion of dispute as prescribed under Section 11 AC (1)(d) of the Act.

17. Ld. Counsel further urges that cases not involving fraud, suppression, etc., is covered under Section 11 A(1) of the Act, wherein show cause notice can be issued within the normal period (2 years). In such cases, the assessee on his own ascertainment or on being pointed out by the Central Excise Officer, may deposit the amount before issuance of show cause notice, under Section 11 A(1)(b). In such scenario, no show cause notice is required to be issued and the matter is required to stand closed as prescribed under Section 11 A (2) of the Act.

In the second category of cases involving fraud, suppression, etc., is covered under Section 11 A (4) of the Act, where show cause notice can be issued within 5 years. There is no provisions similar to Section 11 A(2) for non-issuance of the show cause notice, in case of fraud, suppression, etc., even if an assessee deposits the entire amount during investigation.

Further, in case involving fraud, suppression, etc., as is the allegation in the present case, the Central Excise Authority is bound to issue a show cause notice in terms of Section 11 A(4) read with Section 11 AC (1)(d) of the Act.

18. **Section 11 AC 1 (d)** specifically provides –

“Where any duty demanded in a show cause notice and interest payable thereon issued in respect of transactions referred to in Clause (c) in case of fraud, etc., is paid within 30 days of the communication of the show cause notice, the amount of penalty liable to be paid by such person shall be 15% of the duty demanded, subject to the conditions that such reduced penalty is also paid within the period so specified, and all

proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded.”

19. Thus, in case of the facts as involved in the present case, as alleged, attracting the provisions of Section 11A(4), either an assessee can opt to deposit the tax, interest and the reduced penalty and intimated the same to the Central Excise Officers accepting the allegations in the show cause notice, requesting for closure under Section 11 AC(1)(d), otherwise Central Excise Officer is required to pass a reasoned and speaking order under Section 11 A(10) of the Act. Evidently, the closure of the cases, involving fraud, suppression, etc. under Section 11 AC (1)(d) is contemplated only after issuance of show cause notice and not prior or without the issuance of show cause notice. Without issuance of show cause notice, the provisions of Section 11 AC(1)(d) are not attracted. Thus, in absence of show cause notice, there can be no closure, as prescribed under Section 11 AC(1)(d) of the Act.

20. Ld. Counsel further urges that the appellant has never given any waiver of its right to receive a written of show cause notice under Section 11 A(4), which covers a case involving fraud, suppression of facts, etc. Thus, it was imperative for the Department to issue a written show cause notice under Section 11 A(4) and thereafter to proceed in accordance with the law.

21. Ld. Counsel further urges that the CBEC’ instructions /clarifications dated 18.08.2015 F.No.137/46/ST cannot override the provisions of the Act. Contrary to the provisions of Section 11A(4) read with Section 11AC (1)(d), Clause 2.3. of the CBEC Clarification dated 18.08.2015, provides as follows:-

"2.3 If the ground on which, the Department feels that there has been short/non-payment of tax/ duty are intimated to the assessee orally with its quantification and the assessee indicates in writing that he has been informed about such ground and he accepts the ground and the quantification and he is waiving for the requirement of written show cause notice, then a written show cause notice need not be issued."

22. Ld. Counsel further states that the clarification issued by the Board following the ruling of the Apex Court in the case of **Virgo Steel - 2002 (141) ELT 598**, are not applicable in the facts of the present case. As it was decision in relation to Section 28 of the Customs Act as existing during pre-1990 period, and the present provisions of Section 11 A and 11 AC are nowhere pari materia, rather are at variance. Under Section 28 of the Customs Act, 1962, as it existed in pre-1990 era, the provisions for issuance of show cause notice except for the time limit was the same in all cases whether or not involving suppression of facts, fraud, etc. Whereas in the present provisions under Central Excise Act, the requirement of issuance of show cause notice is optional depending upon the circumstances under Section 11A(1) (normal case) and Section 11 A(4) (fraud case – where extended period is available). Further, Section 11 AC (1)(d) clearly stipulates - for closure only after issuance of show cause notice in case the facts attract the provisions of Section 11 A(4). Further, in the **Virgo Steels**, the Apex Court never suggested the waiver of adjudication. There cannot be force closure extinguishing the rights to contest the issues on merits, even if right to receive show cause notice is waived. The Apex Court has not prohibited adjudication and filing of appeal, rather in **Virgo Steels**, the challenge of the demand on the sole ground of non-issuance of written show cause notice was dismissed.

23. Ld. Counsel further draws attention to the provisions of Section 124 of the Customs Act, which has been referred to in the instructions/clarification dated 18.08.2015, which provides for waiver of written show cause notice and issuance of oral show cause notice and further pursuant to oral hearing, an adjudication order has to be passed. Ld. Counsel urges that the said provisions of Section 124 of the Customs Act has been made applicable to the Central Excise Act, vide notification no.68/63-CE, applies only to seizure cases where confiscation is proposed. Further, also urges that Section 11 A of the Central Excise Act deals with the demand of duty and is an independent section, not borrowing any authority from the Customs law. Further, reliance is placed on para 51 of the ruling of the Apex Court in **Kranti Associates Pvt. Ltd. Vs. Masood Ahmd. – 2011 (273) ELT 345**, where it has been held that reasons are required in both the administrative and quasi-judicial orders, affecting the rights of parties pre-judicially. That reliance is also placed on the following rulings:-

- (i) **Asstt. Commr. Commercial Tax Department Vs. Shukla & Brothers – 2010 (254) ELT 6 (SC).**
- (ii) **Uma Nath Pandey Vs. State of U.P. 2009 (237) ELT 241 (SC)**
- (iii) **Manju Varma Vs. State of U.P. 2004 (178) ELT 64 (S.C).**

24. Ld. Counsel further urges that the appellant can challenge the vires of law / circular/clarification before the Appellate Authority as a question of law, and there is no estoppel against law. It is a settled principle of law that one should not be allowed to turn back on facts,

but a poor understanding of law at one point of time cannot prevent the person to plead the correct position of law subsequently. Even under the Contract Act, an agreement in restraint of the law is *void ab initio*. Further, urges that consent for an action or forbearance contrary to law is not a consent in the eyes of law. Thus, the impugned communication dated 29.07.2016 neither concludes the dispute between the appellant and the Revenue, nor is there any deemed closure under the provisions of Section 11 AC (1)(d) of the Act.

Reliance is placed on the ruling of the Allahabad High Court in the case of **Sidharth Chemicals vs. Union of India -2014 (307) ELT 44** where it has been held that waiver of claim for interest on delayed refund by the parties is irrelevant, and payments of interest cannot be denied on such ground because neither law can be trumped by anybody nor there is any estoppel against the law. Reliance is also placed in the case of **Polytex Industries Vs. Asstt. Commissioner of Central Excise -2012 (281) ELT 48 (Madras)**. Thus, in the facts and circumstances, the communication dated 29.07.2016, purportedly under Section 11 AC 1(d), cannot be treated as valid and legal, being evidently in violation of the provisions of Section 11 A(4) read with Section 11 AC(1)(d) of the Act.

25. It is further urged that the DGCEI has not pin pointed as to under which section/provision of law, communication dated 29.07.2016 has been issued. Taxes are statutory demand and they cannot be settled on the basis of private contracts. Any liability which arises under a Tax Act, needs to be settled/disposed statutorily under the provisions of the Act. Thus, the communication dated 29.07.2016, effecting the legal right of the appellant prejudicially, by denying the

issue of a show cause notice, is an appealable order under Section 35 B 1 (a) of the Act, as it effects the statutory rights of the appellant, as provided under Section 11 A(4) read with Section 11 A C (1)(d) of the Act. The word "decision" is not defined in the statute and based on the dictionary meaning, the communication dated 29.07.2016, definitely qualifies as the decision of the ADG – DGCEI, and thus appealable. Further, ADG of DGCEI has been appointed as a Central Excise Officer in the rank of the Commissioner, and has been given all the powers of adjudication, including under Section 11 A (10) of the Act.

26. Ld. Counsel in reply to the arguments of the Id. DR that the communication dated 29.07.2016 was essentially an inter-departmental communication and therefore, the said communication cannot be treated as an adjudication order and therefore, the appellant is remediless, and advantage should be bestowed upon the Revenue by not disturbing the settlement/closure, acknowledged by communication dated 29.07.2016. It is urged the stand of the Revenue that decision dated 29.07.2016, has been taken by an incompetent officer (lacking jurisdiction), to appropriate the amount by inter-departmental communication, then there is more reason to set aside the impugned communication dated 29.07.2016.

27. It is further urged that even Clause 2.3 of the CBEC Instructions/Clarification dated 18.08.2015 requires satisfaction of following four conditions, as a pre-condition for non-issuance of written show cause notice.

- Communication of precise grounds to assessee on which department seeks denial of credit (**this may be done orally**).

- The communication by assessee in writing that he has been informed about such grounds. **(Thus precise grounds though communicated orally, are reduced in writing and communicated back to department. Therefore, if there are communication gaps and department and assessee are not on same page, it shall be checked at this stage. By assessee, communication of grounds cannot be oral).**
- The assessee in writing accepts the grounds as well as the quantification which has been reduced in writing. **(This eliminates the LIS between assessee and the department and thus nothing remains to be adjudicated. Grounds are already abundantly clear and reduced in writing and accepted by party and thus those grounds cannot be challenged by party at all).**
- After accepting the grounds assessee waives the right to receive a written SCN. **(This waiver of right to receive SCN is always with respect to grounds communicated and accepted by party in writing and with respect to no other ground).**
- Since the grounds for short/non-payment of tax/duty, put forth in the communication dated 29.07.2016 issued by DGCEI travels beyond what has been agreed by DSL, it cannot be treated as a valid legal document appropriating the amounts paid by DSL either under Section 11 A or even under the CBEC instructions.
- The argument of learned DR that letter dated 29.07.2016 issued by DGCEI is basically an inter-departmental communication, not directly addressed to DSL, also supports the stand of appellant

that, it cannot be treated as a valid legal document appropriating the amounts paid by DSL, and thus needs to be quashed. "

28. Id. Counsel further urges that appellant as a manufacturer, being eligible, have taken the cenvat credit in dispute, as they satisfy the conditions prescribed under Rule 3 of Cenvat Credit Rules, 2004. The inputs have been received by them in their factory. Such inputs are accompanying by duty paying documents and duty paid character of inputs is not in dispute. Further, the inputs received are of a kind to be used in the manufacture of dutiable products and are actually components or inputs in the manufacture of dutiable output, which is also not in dispute. In the facts of the present case, the issue being a contested one and there being a dispute between the parties as to receipt or non-receipt of the inputs in question, therefore, in the facts, an adjudication was required, and there can be no closure in terms of Section 11 AC (1)(d) read with Clarification/Instructions dated 18.08.2015. Reliance is also placed on the ruling of the Hon'ble Madras High Court in the case of **Vikas J. Shah Vs. Commissioner (Appeals) – 2016 (334) ELT 491 (Madras)**, where the letter(s) written by the Revenue affecting the rights of the assessee, has been held to be appealable. Reliance is also placed on the case of **Gurdeep Kaur Vs. Commissioner -2015 (325) ELT 490 (Delhi)** and the **Commissioner of Customs Vs. S.S. Offshore (P) Ltd. – 2018 (361) ELT 51 (Bombay)**.

29. Accordingly, Id. Counsel prays for setting aside the impugned order/communication dated 29.07.2016, with further directions, in the interest of justice.

30. Opposing the appeal, Id. Authorised Representative for Revenue urges that the communication dated 29.07.2016 is not an appealable order. The appellant have approached this Tribunal against the impugned letter, which is not a decision or order passed by the Commissioner as an adjudicating or appellate authority. Further, the impugned letter is only an endorsement of intimation to the appellant of an Administrative Act under the Statute, and not a decision or order passed in adjudication. The impugned letter is in fact an intimation to the Jurisdictional /Field Commissioner in Noida-I and Delhi-II, regarding statutory closure of proceedings against the appellant in terms of Central Excise Act, read with instructions /clarification dated 18.08.2015. It is further urged that the proceedings under the impugned communication are deemed to be closed after verification of the certain acts, prescribed by the statute, is not appealable before this Tribunal. The Board's Circular /clarification dated 18.08.2015, provides that in case an assessee pays the tax, interest and the prescribed penalty, and makes a request in writing that written show cause notice may not be issued to him, then the proceedings can be concluded without adjudication. Further, reliance is placed on the ruling of the Apex Court in the case of **Virgo Steels (supra)**, where it has been held that principle of estoppel applies after the assessee has specifically waived the rights for written notice, and later comes forward to claim the benefit on the ground of non-issuance of show cause notice. In the facts of the present case, the appellant has opted to avail the benefit in respect of reduced penalty and for settling the offence alleged, after waiving the right for the written show cause notice, they paid the tax along with the interest and reduced penalty and prayed for adjustment in terms of Circular/clarification dated

18.08.2015, issued pursuant to amendment in the Central Excise Act by the Finance Act, 2015, wherein Section 11AC was substituted w.e.f. 14.05.2015. Thus, the appellant should not be permitted to turn around and contend that the closure against him is void for want of show cause notice.

31. Ld. Departmental Representative further refers to the series of the correspondence already noted hereinabove. He further specifically points out to para-2 of the letter dated 20.07.2016 written by the appellant to DGCEI, wherein they have mentioned in reference to their earlier letters, that they agreed with the grounds and on facts of procedural lapse shown by SIO/DGCEI, in establishing their duty liability under the relevant provisions of the Act, and waived their right to the written show cause notice in terms of the CBEC circular/clarifications. Further, the appellant has acted upon and has deposited the stipulated the amounts along with interest and penalty and has further requested for assurance of letter of acceptance of payment, and issuance of closure certificate. The appellant also reiterated their request for closure of connected proceedings on their Vice Chairman, Directors and staff of the company as well as their suppliers, etc.

32. Ld. Authorised Representative further refers to the letter dated 8.2.2017 written by the appellant to the ADG-DGCEI, wherein they have referred to the correspondence and the impugned letter dated 29.07.2016, they have reiterated their offer letter dated 23.05.2016 and confirmed that they do not have any intention to challenge the closure of proceedings subject to regard of their position, as stated in their letters dated 23.05.2016 and 8.8.2016. Further, request was

made to return the seized documents/lap top and mobile phones, etc. Further, reliance is placed on the Ruling of a Coordinate Bench of this Tribunal in **Titan Industries – 2014 (307) ELT 884**, wherein the issue was of maintainability of appeal against letter inviting the participation in E-auction of watches of Titan Brand, upon compliance of prescribed procedure. The said letter was issued with the approval of the Commissioner of Customs. The question for determination before the Tribunal was – whether this letter of Asstt. Commissioner can be considered as an order, against which the appeal can be preferred before the Tribunal.

33. Having considered the rival submissions and grounds of appeal and the written submissions of both the parties, we find that the bone of contention between the appellant and the DGCEI is that the settlement is not in the proper legal spirit, neither it is out of free consent and have further exposed the appellant to adverse inference particularly under the other tax laws and also as a matter of business repute. The main allegation of the DGCEI against the appellant is that they have done only paper transactions for some inputs and they have actually not received the said inputs from the 13 specified parties, whereas the contention of the appellant has been that they have received the inputs and as they have been made to understand that there is some discrepancy in the documents accompanying the inputs. Accordingly, they came forward to settle by reversing/repaying the cenvat credit involved. Thus, there is ambiguity, and evidently, both the appellants and the DGCEI are not on the same page as regards the settlement of the dispute. The appellant in their offer letter dated 23.05.2016 followed by 22.6.2016 and 20.07.2016, have all throughout stood by their stand that they have received the inputs and

only the cenvat credit is disputed due to some technical defects in the documents, whereas the DGCEI in the purported closure letter dated 29.7.2016 has categorically stated that the appellant has not received the inputs with respect to invoices of 13 suppliers/manufacturers during the period May, 2012 to October, 2015.

34. Revenue has raised a preliminary objection as regards the maintainability of the present appeal on the ground that the said letter /communication dated 29.07.2016 is not an appealable order. Under the facts and circumstances, and on reading of the provisions of Section 11 AC (1)(d) of the Act, there being alleging of fraud and extended period involved in the demand, the law as per Section 11 A(4) requires issue of show cause notice which cannot be dispensed with. Further, there is condition precedent in Section 11 AC(1)(d) which provides for settlement of duty demanded in a show cause notice. Thus, the contention of the DGCEI that show cause notice has been rightly waived in the facts and circumstances by the appellant, in terms of CBEC's instructions /clarification dated 18.8.2015 is frivolous. Instructions/clarifications by the Board cannot override the provisions of the Act. When the Act requires a particular action to be done in a particular way, it has to be done in that way. Further, reliance has been placed by the Revenue on the ruling of the Hon'ble Supreme Court in the case of **Virgo Steels (supra)**, is not applicable in the facts of the present case as the said ruling was in respect of Section 28 of the Customs Act as it stood prior to 1990. Whereas in the present case, Section 11 A as substituted by the Finance Act ,2011 w.e.f. 8.4.2011 and further, Section 11 AC has been substituted by Finance Act, 2015 w.e.f. 14.5.2015. There is clear distinction made by the Statute, as in Section 11 A (1), in the facts of normal case where

there is no allegation of fraud, collusion, mis-statement, etc., the show cause notice can be issued within the normal period of limitation and if, prior to the issue of the show cause notice the appellant on being pointed out by the Central Excise officer or on his own, voluntarily deposited the tax and interest under intimation to the Department, then no show cause notice is required to be issued and the matter stands closed. Whereas under Section 11A(4), in cases involving fraud, collusion, mis-statement, etc., the show cause notice has to be compulsorily issued and there is no waiver from the issue of show cause notice, has not been waived under sub-section (2) of Section 11A, as in the case of normal situation. Further, in view of the condition precedent in Section 11AC(1)(d), for settlement or closure of dispute, a show cause notice was essentially to be issued and could not have been waived. Further, we find that the impugned letters/ order dated 29.07.2016, visits with grave civil consequences on the appellant, and hence it has trapping of an adjudication order. Further, we find no merit in the argument of the DGCEI that the said letter dated 29.07.2016 is only a communication from the office of ADG, DGCEI to the jurisdictional Commissioner(s), copy of which is marked for information as per purported closure of the dispute under Section 11AC (1)(d) read with CBEC instructions / clarification dated 18.08.2015, is not an appealable order or is not an order but only a communication issued to the adjudicating authority of the appellant. We further find no merit in the other contention of the Revenue that the said letter is wholly a communication of closure of the investigation/ proceedings and there being no adjudication, no appeal lies. Further, we find that the so-called waiver by the appellant for issue of show cause notice has been mis-understood by the DGCEI, as

the said waiver was with the categorical stand that the appellant has received the inputs in question. Thus, either the DGCEI should have accepted the stand of the appellant, otherwise they were bound to issue show cause notice and thereafter proceed in accordance with law. An agreement in restraint of law does not bind the parties into a contract. In the facts and circumstances, the show cause notice is required to be essentially issued, that there is estoppel against law.

35. We further find that the appellant within a few days after issue of the purported closure on 29.07.2016 by their letter dated 08.08.2016, received in the office of the ADG-DGCEI on 10.08.2016, have again drawn attention towards the panchnama drawn and the statement recorded during the course of investigation, reiterating their stand that they have received the goods / inputs and used the same in the production. Such goods/ inputs have been received alongwith the duty paying documents. However, due to discrepancy at the supplier's and/or manufacturer's end, they have proceeded for settlement. It was also reiterated that the DGCEI has not disputed the records of the appellant as regards the receipt and consumption of the raw materials/ inputs in question. The appellant has further disputed the closure of the dispute and has also raised their doubts as to adverse inference by the other tax departments, and its shareholders, etc. They have also prayed for amendment/ clarification to the closure letter dated 29.07.2016.

36. Further, in the facts and circumstances, we find that the appellant and its director and its other personnel were subjected to undue influence and coercion by the DGCEI. One of the Directors was arrested (remanded in custody for many days) and DGCEI has been

constantly calling its various officers to its office for recording of the statement and investigation, which was seriously affecting the normal business operation of the appellant. Further, the various records including computers, mobile phones of the key personnel of the appellants were also under seizure by the department. Thus, under such circumstances, the appellant was under pressure to opt for closure in order to purchase peace. The closure as specified in terms of Section 11AC(1)(d), is in the form of a binding contract between an assessee and the revenue. Free consent of the party is one of the basic requirement for a binding contract. The principle of law is no contract, for want free consent. Even clause 2.3 of the CBEC instructions /clarifications requires that the Revenue should convey the allegations and quantification to the assessee and the assessee upon understanding the allegations may, without any dispute accept such allegation and waive the requirement of written show cause notice and opt for closure /settlement by depositing the tax interest and reduced penalty. Thus, even the circular prescribes for a free and informed consent on the part of the appellant, which is totally missing in the facts of the present case.

36. In the facts of the present case, in view of the non acceptance of the allegation of the DGCEI by the appellant, as to non receipt of the inputs in question, we hold that the purported waiver vide communication dated 20.07.2016 is bad and illegal and is not enforceable against the appellant. Due to non agreement with the allegation of the DGCEI by the appellant, the DGCEI was bound to issue show cause notice and thereafter proceed in accordance with law.

37. Further, we find that it has been provided in the CBEC circular / clarification dated 18.08.2015 that the letter of closure should be issued by an officer equivalent to the adjudicating authority. Further, quantification of the demand can only be communicated to an assessee once an investigation gets completed. Further, as per CBEC clarifications, a letter of closure is required to be issued without a separate adjudication order. Thus, the said closure dated 29.07.2016 is equivalent to an adjudication order, for all practical purposes. Thus, we find that even instructions dated 18.08.2015 of CBEC have also been circumvented by ADG, DGCEI by issuing the closure letter, instead of a show cause notice, there being non acceptance of the allegation of the Revenue by the appellant / assessee.

38. We find that in somewhat similar circumstances, in **Vikas J. Shah vs Commissioner (Appeals) – 2016 (334) ELT 491 (Mad.)**, where the grievance of the assessee was that their offer of closure of proceedings in terms of the circular, as contained in its letter was conditional and they never agreed to the non payment of duty by the suppliers/ sellers or to non receipt of the goods, but only due to procedural lapse on the part of the supplier. Further, there was no fraud, suppression etc. on the part of the appellant/ assessee. Otherwise also, duty cannot be recovered both at the end of the buyer and the seller for the same transaction. The Hon'ble High Court found that there cannot be a process which prescribes circumventing of show cause notice as well as adjudication order, by explaining the whole case in oral. Conducting hearing in oral and then deciding about closure, without a reasoned order, there being differences in understanding the grounds is not tenable. If such process is provided for by a circular of CBEC without specific authority of the statute, then

it is bound to be bad in law. No circular can be in violation of the principles of natural justice and cannot deprive any person of any legal remedy available to him, the minimum that the circular should have provided is for a reasoned order while closing the case, in the event of difference in understanding the grounds or conditions. The Hon'ble High Court found the closure letter in complete circumvention of the provisions of the law.

39. Further, we notice that even Section 124 of the Customs Act, which provides that at the instance of an assessee/party, the show cause notice can be oral, prescribes for passing of a reasoned order in accordance with law. Similar principles have been laid down by the Apex Court in the following decisions:

- (i) **2011 (273) ELT 345 (SC): Kranti Associates (P) Ltd. Vs. Masood Ahmed.**
- (ii) **2010 (254) ELT 6 (SC): Asstt. Commissioner, Commerical Tax Department Vs. Shukla & Brothers.**
- (iii) **2009 (237) ELT 241 (SC): Uma Nath Pandey Vs. State of U.P.**
- (iv) **2004 (178) ELT 64 (SC): Manju Verma Vs. State of U.P.**

40. We also find from the documents on record that in the course of investigation, DGCEI found some of the disputed inputs physically present in the factory premises and records of the consumption of such inputs in the production of dutiable products, have not been disputed. Further, we find that the appellant in their letter dated 22.06.2016 and 22.07.2016 has categorically mentioned such facts, as regards one of

their supplier – Kanpur Perfumary Private Limited. We further find in their offer letter for settlement that the settlement should be affected not only against the company but also for Vice Chairman, Directors, Suppliers and other co-noticees, and refers to some assurances given to them to withdraw such type of all cases and complaints filed by the department. We further find that Hon'ble Delhi High Court in the case of **Shiv Shakti reported in 2016 (336) ELT 415 (Del.)** has laid down that show cause notice should not be waived in case of three exceptions i.e.- (i) where offence of serious nature is involved or (ii) high stakes are involved and /or (iii) legal questions are involved. For other situations, however, show cause notices can be waived. In this case, there is no denying that high stakes were involved and there also question arises as to the duty paid by the suppliers or the appellant is un-authorised, and who is actually required to pay duty and who is entitled to refund.

41. Accordingly, we hold that the impugned letter of closure dated 29.07.2016 is bad and illegal and the same is accordingly set aside. The said closure letter is neither in the spirit of the CBEC's circular/ clarification dated 18.08.2015 and is evidently in violation of the provisions of Section 11 A(4) read with Section 11 AC (1)(d).

42. We are in notice of the fact that Revenue has completed its investigation and has already quantified the demands. Accordingly, we grant liberty to the Revenue, that by following the statutory process and natural justice to issue a show cause notice to the appellant, if they so desire. For the purpose of limitation, the period from 29.07.2016 to till date of issue of this order shall stand excluded for the purpose of calculation of limitation. Such show cause notice should

be issued within 3 months from the date of issue of this order.
Pursuant to issuance of the show cause notice, the appellant shall be at liberty to either contest or settle in accordance with law.

43. Thus, the appeal stands allowed, with consequential benefits.

(Pronounced on 09.01.2020)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

Ckp