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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/591 /2009,594 /2009,631 /2009-641 /2009,708 /2009-716 /2009,807
/2009,1595/2009 - EX[DB]

Date 15/09/2009

Assistant Registrar
C.E.S.T.A.T., New Delhi

To :
M/S PRAKASH INDUSTRIES LTD.
CHAMPA, DISTT: JANJGIR-CHAMPA
CHHATTISGARH.
M/S PRAKASH INDUSTRIES LTD.

Appellant

Vs

Respondent

C.C.E. RAIPUR

2009 EX[DB] dated 07-9-09

I am directed to transmit herewith a certified copy of Final order No. 657-680

passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

SHRI S.K.BAGARIA. SR. ADV.. WITH
MR.ROHIT CHOUDHARY
M-8/10, DLF CITY-2, GURGAON-122002

3 C.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46. Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

16 Office Copy

17 Guard file

18. HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

19. SH. NIKHILESH R, ADV.,

CHAMBER NO. 18, NEW LAWYER CHAMBER,

SUPREME COURT, N. DELHI-

P.T. O. - 2-3,

20. M/S J.P. STEEL TRADERS,
(WRONGLY MENTIONED IN O/O AS J.P. STEELS) WANJRA
LAYOUT, KAMPTEE ROAD, NAGPUR.
21. M/S JAI AMBEY GOODS CARRIER
NEAR LOHA BAZAR, RING ROAD NO. 2 HIRA PUR, RAIPUR
22. M/S PRABHU STEEL INDUSTRIES LTD
159/160, SMALL FACTORY AREA, BAGADGANJ, NAGPUR.
23. M/S PRAKASH INDUSTRIES LTD.
GOGAON, RING ROAD NO.2, RAIPUR, CHHATTISGARH.
24. M/S RAJU STEEL INDUSTRIES
243, SMALL FACTORY AREA, BAGADGANJ, NAGPUR.
25. M/S SANVIJAY ROLLING & ENGG LTD
UNIT B-1, B-202, MIDC, BUTIBORI, NAGPUR
26. M/S SHARDA ISPAT LTD.
KAMPTEE ROAD, NAGPUR.
27. M/S SHRI GURUNANAK ROADWAYS,
RING ROAD NO.2, OPP. HAPPY DIABA TANTIBANDH,
RAIPUR (C.G.)
28. M/S SWETAL STEEL INDUSTRIES PVT L TD
51, SMALL FACTORY AREA, BAGADGANJ, NAGPUR.
29. M/S VINAYAKA ISPAT
(A UNIT OF DIWANKA IRON & STEEL CO P LTD) 6 KM STONE,
DATTAPUR, NAGPUR ROAD, WARDHA.
30. M/S VIVEK STEELS,
RAMSAGERPARA, RAIPUR (C.G.)
31. SH S.N. JHA DEPUTY, G.M. (EXCISE)
M/S PRAKASH INDUSTRIES LTD. CHAMPA, DISTT- JANJIR-
CHAMPA, CHHATTISGARH
32. SH. ASHOK KUMAR SHARMA, SR. GENERAL MANAGER (ACCOUNTS) OF
PRAKASH INDUSTRIES LTD. CHAMPA, DISTT. JANJIR-
CHAMPA, CHHATTISGARH.
33. SH. G.L. MOHTA, DIRECTOR (OPERATION) OF
PRAKASH INDUSTRIES LTD. NEAR IOCL DEPOT NAJAFGARH
ROAD,
NEW DELHI.

4. SH. RAKESH KUMAR BHADOURIA, ADDL. GENERAL MANAGER (LOGISTICS) OF PRAKASH INDUSTRIES LTD. CHAMPA, DISTT. JANJGIR-CHAMPA, CHHATTISGARH.
5. SHRI N.K. GUPTA, PRESIDENT, M/S PRAKASH INDUSTRIES LTD. NEAR I.O.C.L. DEPOT, NAJAFGARH-BIJWASAN ROAD, BIJWASAN, NEW DELHI
6. SHRI SANJAY KUMAR JOSHI, SR. GENERAL MANAGER (COMMERCIAL) OF PRAKASH INDUSTRIES LTD. CHAMPA, DISTRICT-JANJGIR-CHAMPA, CHHATTISGARH.
7. M/S ASSOCIATED STEEL INDUSTRIES PLOT NO A-42, MIDC KAMLESHWAR, NAGPUR.
38. M/S DIGNATH STEEL INDS&ENGG WORKS PLOT NO 8/27, EASTERN INDUSTRIAL AREA, KALAMNA, NAGPUR.
39. M/S LIFT & SHIFT, GONDWARA, RAIPUR (C.G.)
40. M/S MUNIS FORGE LTD 258, SMALL FACTORY AREA, BAGADGANJ, NAGPUR.
41. M/S ORANGE CITY STEEL INDUS(P) LTD KALAMNA, KAMPTEE ROAD, VILLAGE- RANALA, NAGPUR.
42. M/S R.K. STEEL INDUSTRIES NEAR MEHTA KANTA, ITWARI, OLD BHANDARA ROAD, NAGPUR.

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

PRINCIPAL BENCH - COURT NO. 1

DATE OF HEARING : 21.08.2009

DATE OF DECISION : 21.08.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT

HON'BLE MR. B.S.V. MURTHY, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes.

S.NO.	APPEAL NO.	NAME OF APPELLANT	RESPONDENT	ARISING OUT OF ORDER-IN-ORIGINAL AND DATE	PASSED BY
1.	A.No. E/631/09	M/s Prakash Indus. Ltd.	CCE, Raipur	COMMR/RPR/105/08 DT. 28.11.2008	CCE, RAIPUR
2.	A.No. E/632/09	M/s Prakash Indus. Ltd.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
3.	A.No. E/633/09	Sh. Sanjay Kumar Joshi	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
4.	A.No. E/634/09	Sh. Ashok Kumar Sharma	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
5.	A.No. E/635/09	Sh. G.L. Mohta	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
6.	A.No. E/636/09	Sh. Rakesh Kumar Bhadouria	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
7.	A.No. E/640/09	Sh. N.K. Gupta	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
8.	A.No. E/641/09	Sh. S.N. Jha	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
9.	A.No. E/591/09	M/s Sanvijay Rolling & Engg. Ltd.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR

10.	A.No. E/594/09	M/s Sharda Ispat Ltd.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
11.	A.No. E/637/09	M/s Lift & Shift	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
12.	A.No. E/638/09	M/s Jai Ambey Goods Carrier	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
13.	A.No. E/639/09	M/s Vivek Steels	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
14.	A.No. E/708/09	M/s Associated Steel Indus.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
15.	A.No. E/709/09	M/s R.K. Steel Indus.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
16.	A.No. E/710/09	M/s Vinayaka Ispat	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
17.	A.No. E/711/09	M/s Diganth Steel Inds. & Engg. Works	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
18.	A.No. E/712/09	M/s Swetal Steel Indus. Pvt. Ltd.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
19.	A.No. E/713/09	M/s Munis Forge Ltd.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
20.	A.No. E/714/09	M/s Prabhu Steel Indus. Ltd.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
21.	A.No. E/715/09	M/s Raju Steel Indus.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
22.	A.No. E/716 /09	M/s Orange City Steel Indus. (P) Ltd.	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
23.	A.No. E/807/09	M/s Shri Gurunanak Roadways	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR
24.	A.No. E/1595/09	M/s J.P. Steel Traders	CCE, Raipur	COMMR/RPR/105/08 28.11.2008	CCE, RAIPUR

APPEARANCE : SHRI S.K. BAGARIA, SR. ADVOCATE WITH SH. ROHIT CHOUDHARY, ADV. FOR APPELLANTS FROM SL. NO. 1 TO 8

SHRI NIKILESH R., ADVOCATE FOR APPELLANTS FROM SL. NO. 9 TO 24

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. BSV MURTHY, MEMBER (TECHNICAL)

FINAL ORDER NO. 657 - 680/09-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

Since common question of law and facts arises in all these appeals, they were heard together and are being disposed of by this common order.

2. Though the impugned order is sought to be challenged on various grounds, it is not necessary to address to all those grounds and suffice to refer to only two grounds, namely, one relating to misconstruction of provisions of law comprised under Section 33-A of the Central Excise Act, 1944, and another relating to arbitrary rejection of the request for cross-examination of the persons whose statements were sought to be recorded and relied upon while arriving at the final conclusion about the duty liability of the appellants.

3. Pursuant to search and seizure carried out by the Central Excise authorities, various documents and records came to be seized from the manufacturer/appellants herein and some of the transporters as well as purchasers of the product. Consequent to the investigation carried out, a show cause notice came to be issued on 13th April, 2007 to the appellants requiring to show cause as to why the duty should not be demanded from them in relation to unaccounted products manufactured by the manufacturer/appellants. As far as the transporters and the purchasers are concerned, they were required to show cause as to why the penalty should not be imposed for having connived with the manufacturer/appellants in the process of transporting such unaccounted goods.



4. It appears that some of the noticees filed their replies, whereas some of the appellants insisted for cross-examination of the persons whose statements were recorded and relied upon by the Department, even before filing their replies. Their request did not find favour with the lower authority and the matter proceeded, and ultimately the impugned order came to be passed.

5. While assailing the impugned order on various grounds, it is sought to be contended on behalf of the appellants that, the Commissioner misconstrued the provisions of law comprised under Section 33-A of the Central Excise Act, 1944 inasmuch that the concept of three hearings thereunder was sought to be construed as the outer limit for number of days for hearing of a matter and thereby no fair opportunity was given to the appellants to contest the proceedings. Further, drawing our attention to a letter dated 26th September, 2008 addressed by the Commissioner to one of the appellants, it was sought to be contended that it clearly revealed bias attitude on the part of the Commissioner vis-à-vis the appellants as it clearly disclosed that the Commissioner had pre-judged the issue in relation to the right of the appellants to cross-examine the persons whose statements were recorded by the investigating authority and were sought to be relied upon in support of allegations in the show cause notice as well as ultimately in support of the findings arrived at against the appellants by the adjudicating authority. In that regard, the learned advocate for the appellants has drawn our attention to the decision of the Apex Court in the matter of **State of West Bengal &**

Ors. Vs Shivananda Pathak & Ors., reported in (1998) 5 Supreme Court Cases 513.

6. The learned Jt. CDR, on the other hand, strenuously arguing on behalf of the respondent, submitted that, the contentions sought to be raised in relation to the bias attitude on the part of the Commissioner are totally devoid of substance. Drawing our attention to a letter dated 24th September, 2008 which was submitted by the appellants to the Commissioner and in respect of which the letter dated 26th September, 2008 was addressed by the Commissioner to the party, he submitted that, the letter dated 26th September, 2008 purely discloses an interim order by the Commissioner on the request made by the appellants for cross-examination of the persons whose statements were recorded. He further submitted that, such an order was invited by the appellants themselves and, therefore, it is too late for the appellants now to contend that it discloses bias attitude on the part of the Commissioner. He also submitted that, the conduct of the appellants, right from the commencement of the proceedings, had been of the nature of uncooperative attitude and, therefore, bearing in mind the mandate of the statutory provisions under the said Act, the Commissioner was left with no alternative then to pass the said order and to communicate the same in the form of a letter to the party so that the disposal of the proceedings was expedited. Referring to the letter dated 24th September, 2008 addressed by the party, he also submitted that, the same discloses that the appellants had even denied all the contents of the show cause notice and thereupon had stated that they wanted to cross-examine the persons whose statements were

recorded in order to test the veracity of their statements. Further, drawing our attention to para 6 of the said order, he submitted that, the contents thereof clearly disclose non-cooperative attitude on the part of the appellants for speedy disposal of the proceedings. Relying upon the decision of the Tribunal in the case of **Debu Saha vs Collector of Customs**, reported in 1990 (48) ELT 302, he submitted that, in any case, merely because the statements have been relied upon as corroborative piece of evidence and not that findings are solely based on such statements, it cannot be said that there was any violation of the principles of natural justice. He submitted that, in quasi-judicial proceedings authorities are not bound by strict rules of evidence and procedure, and they can even rely upon the information received by them from different sources, even though the same is not made available to the parties for their perusal. He also submitted that, there was no grievance made by the appellants about the alleged bias attitude at any point of time during the proceedings before the Commissioner till the final order was delivered. Being so, it is too late in the day for the appellants to make such allegations against the Commissioner. The appellants could have very well challenged the order dated 26th September, 2008 immediately after receipt of the copy of the same.

7. As regards Section 33-A is concerned, sub-section (1) thereof provides that, the adjudicating authority shall, in any proceeding under the Act, give an opportunity of being heard to a party in a proceeding, if the party so desires. Sub-section (2) thereof provides that, the adjudicating authority may, if sufficient cause is

shown, at any stage of such proceedings grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing, provided that no such adjournment shall be granted more than three times to a party during the proceedings.

8. Undoubtedly, Section 33-A(2) provides an embargo upon the power of the adjudicating authority to adjourn the matter indefinitely and for more than three times at the request of a party to a proceedings. However, as rightly pointed out by the learned advocate for the appellants, prolongation of the hearing from one day to another on account of paucity of time or for non-completion of recording of testimony of one or more witnesses or for non-conclusion of the arguments, would not amount to an adjournment within the meaning of the said expression under proviso to sub-section (2) of the said Section. Such prolongation of hearing, though commonly understood as the postponement of proceedings, yet it would amount to continuation of the proceedings from the earlier day to the next day of hearing. Besides, the adjournments, as stated in the proviso, are at the insistence of a party to the proceedings and not on account of any difficulty faced by the authority itself or for the reasons beyond the control of the authority. Besides, the limit of three times adjournment is to be understood in the facts and circumstances of each case. In a given case, the adjudicating authority may not be held to be totally helpless in adjourning the matter even for the fourth time, if the circumstances so demand and leave no other choice. Undoubtedly, such adjournment will have to be for the valid and justifiable reasons to be recorded in writing by the concerned authority.

9. As regards the second point pertaining to the contention relating to the legal bias alleged to have revealed from letter dated 26th September, 2008, it would be appropriate to reproduce the contents of the said letter. The same read as under :

"1. Please refer to your letter dated 24.09.2008 requesting for cross-examination of some persons. In this regard, it is to inform you that the case of the Department is based on documentary evidences secured from various sources and not on the testimony of the persons to whom you desire to cross-examine. Hence, you may defend your case on the date of next hearing fixed on 06.10.2008.

2. Further, it is also brought to your notice that in terms of Section 11A(2A)(a) of the Central Excise Act, 1944, I am bound to decide the case within a period of one year. It is seen that the show cause notice was issued on 30.04.2007 and since then you entered into several correspondence with the Department. It is evident from your letter No. PIL/EX/2007-08 dated 18.02.2008 that you installed a photocopy machine in this office and deputed your staff to take extract of the documents. However, looking to slow speed of your staff, the Department expedited the process of photocopy and its own and offered to collect the documents by 15.03.2008 vide this office letter dated 13.03.2008. But, instead of collecting the copies of the documents, you have been taking extracts of the documents in piecemeal fashion after receipt of the show cause notice and did not file defence reply. Even after receipt of complete documents on 25.04.2008, you did not submit anything in your defence at the time of three hearings fixed on 30.04.2008/01.05.2008, 25.07.2008 and 24.09.2008.

3. It is also seen from your letter dtd. 30.04.2008 that the relied upon documents were received by you on 25.04.2008 and you wanted 3 months time to prepare the reply. Accepting your request, next hearing was fixed after 3 months i.e on 25.07.2008. However, vide your letter dtd. 25.07.2008, you requested for adjournment for another 6 months, which was not accepted. You were informed vide notice of hearing dated 25.07.08 that next hearing is on 24.09.08 i.e a time period of another 2 months

was given, which is more than sufficient to prepare the defence, as the total time period given since 25.04.08 works out to 5 months altogether. It is clear from the above facts that sufficient opportunities have already been given to you to represent the case. But, you failed to avail of these opportunities. During the course of previous proceedings, you never desired to cross-examine any person, on the contrary you wanted time period to go through the case record and submit reply. Therefore, I do not find any justification to accede to your request for cross-examination at this stage of the case, which is otherwise on facts also, not justified as explained in para 1 above. Accordingly, request for cross-examination is rejected. You may file your reply and present your views during the personal hearing keeping this aspect in view.

4. It may be noted that the case under reference is finally posted for hearing on 06.10.2008. No further adjournment shall be granted in view of the restriction imposed under proviso to Section 33A(2) of the Central Excise Act, 1944 and in case no reply is received or you do not appear for hearing on 06.10.2008, the case will be decided ex-parte on the basis of available record."

10. Undoubtedly, the said letter was in response to the party's letter dated 24th September, 2008. The contents thereof read as under:

"Please refer to aforesaid show cause notice wherein personal hearing has been fixed before your goodself.

1. Most respectfully, at the outset the Noticee deny allegations/contentions made in the show cause notice.
2. In show cause notice statements of various persons has been relied upon in support of the allegations/contentions of the show cause notice.
3. In order to verify the actual position and the veracity of their statements, we request you to allow the cross-

examination of following persons in context of issues mentioned against their names :

- i. Shri Vivek Jajodia, Proprietor, M/s Vivek Steels – Cross-Examination regarding 4 Bills issued by M/s Prakash Industries seized by the officers from his office and the payment made by him to M/s Prakash Industries against these Bills; receipt of this payment from purchaser of goods and payment allegedly received from M/s Prakash Industries; Period of his dealing with M/s PIL; Instructions from Mr. D.K. Singh or M/s PIL regarding preparation of Challans and receipt of commission in cash from M/s PIL; his appointment by Mr. D.K. Singh; Quantum of commission; His IT Returns, sales tax returns or any statutory document where he shows his turnover; his bank accounts etc;
 - ii. Shri T.P. Mukhopadhyay (Senior Manager – Q & A) – Regarding Note paid relied upon in show cause notice, DR, Plant Daily operation report; Preparation of SID – Production Performance Report, his activities etc.
 - iii. Shri D.K. Singh (Junir officer – Logistics) – Invoices issued to M/s Sunvijay; Dealings with Shri Vivek Jajodia; his job functions and other aspects.
 - iv. Shri Raj Athavale, Partner, Mr/ Jai Ambey Goods Carrier, Raipur – Regarding transportation of goods.
 - v. Shri Navratan Tamrakar, Manager of M/s Lift and Shift, Gondwara, Raipur – Regarding shifting and transshipment of goods.
 - vi. Gurunanak Roadways, Ring Road No. 2, Happy Dhaba, Tatiband, Raipur.
4. It is submitted that we are studying the case and if need arises we have to call transporters, the alleged buyers of the goods and different persons concerned with the present case. List of those persons will be submitted in due course.
 5. The Noticee will seek personal hearing only after outcome of cross-examination based on which we shall be filing a detailed reply.
 6. It is therefore requested to fix the personal hearing only after conducting cross-examination of the above mentioned persons.

7. It is also requested that the hearing of 24.09.2008 may not be considered as an opportunity of hearing.”

11. At this stage, it would also be necessary to take note of the proceedings before the adjudicating authority which took place prior to the 26th September, 2008. In fact, after receipt of the show cause notice dated 30th April, 2007, the appellants had entered into correspondence with the concerned authorities requesting them to furnish copies of certain documents as well as for return of the un-relied documents. However, such documents were received as late as 25th April, 2008. Thereafter, the matter was fixed for hearing on 25th July, 2008, intimation, in respect of which, was given to the parties under letter dated 23rd June, 2008. On 25th July, 2008, the advocate for the appellants addressed a letter to the Commissioner that on account of voluminous documents, the manufacturer/appellants could not prepare the reply and it would take at least six months to prepare the same and on that ground sought adjournment of the hearing. The same was granted and the matter was posted for hearing on 24th September, 2008. On 24th September, 2008, the above quoted letter was forwarded by the advocate for the appellants to the Commissioner. The same was replied by the Commissioner under letter dated 26th September, 2008 while informing that hearing was fixed on 6th October, 2008. On the said date of hearing i.e 6th October, 2008, the appellants filed reply to the show cause notice and requested for cross-examination of six persons in terms of their letter dated 24th September, 2008 as also to more persons, namely, Pancha witnesses and two of the employees of the appellants, whose statements were

recorded. They also cited eleven reported judgments in support of their contention regarding the necessity for cross-examination of the said witnesses. As there was no further communication, the appellants' advocate under letter dated 20th October, 2008 inquired about the further date of hearing. However, without informing any such date, the Commissioner disposed of the proceedings by the impugned order.

12. At this stage, it is necessary to record that, it is sought to be contended that the reply which was filed by the appellants on 6th October, 2008 was not a detailed reply to the show cause notice, but it was filed  merely to avoid *ex parte* proceedings against the appellants as the Commissioner was insisting for disposal of the matter without giving proper opportunity to the appellants to file the detailed reply in the matter. The contention of the appellants in this regard is denied and rejected on behalf of the respondent.

13. It is an undisputed fact that, till 26th September, 2008 the appellants had not filed any reply to the show cause notice. Though with reference to the contents of para 1 and 2 of the letter dated 24th September, 2008, it was sought to be strenuously argued on behalf of the respondents that the same disclose denial of the contents of show cause notice, it cannot be said that the same would amount to a reply to the show cause notice. Besides, it is vociferously contended on behalf of the appellants that it was not a detailed reply and that it was filed only to avoid *ex parte* hearing against the appellants. Being so, the fact remains that on 26th September, 2008, there was no defence of

the appellants placed on record and the Commissioner had no opportunity to know the defence of the appellants with reference to the show cause notice issued to them. In such circumstances, it was too pre-mature for the Commissioner to decide about the claim of the appellants for cross-examination of the witnesses. Certainly, the Commissioner could have rejected the application/request for cross-examination being pre-mature as the appellants had not filed their reply to the show cause notice. But in no case he could have arrived at the finding that the appellants are not entitled to cross-examine the witnesses in the matter. Such a finding could have been given only after hearing the appellants and in the absence of defence of the appellants being disclosed on record, it cannot be said that the appellants had fair opportunity of placing on record their case and justification for cross-examination of those deponents. The decision, therefore, clearly disclose the same to be pre-mature in the facts and circumstances of the case.

14. While rejecting the request for cross-examination, the Commissioner has specifically observed thus :

"In this regard, it is to inform you that the case of the Department is based on documentary evidences secured from various sources and not on the testimony of the persons to whom you desire to cross-examine."

In other words, the Commissioner had pre-judged the issue in relation to the evidence in support of the allegations against the appellants even without knowing the defence of the appellants to the charges

made against them. This indeed discloses legal bias on the part of the adjudicating authority in the matter.

15. The Apex Court in **Shivananda Pathak's** case (supra) had held that, "One of the requirements of natural justice is that the hearing should be done by a Judge with an unbiased mind". Elaborating the concept of bias, it was observed that, "Bias may be defined as a preconceived opinion or predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the Judge unable to exercise impartiality in a particular case". It was further held that, "Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject matter in dispute, or policy bias etc.". It was reminded that, "Judges, unfortunately, are not infallible. As human beings, they can commit mistakes even in the best of their judgments reflective of their hard labour, impartial things and objective assessment of the problem put before them". It was ruled that, "An essential requirement of judicial adjudication is that, the Judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a Judge". It was also reminded that, "Bias is a condition of mind and, therefore, it is not always be possible to furnish actual proof of bias".

16. Taking into consideration the law relating to bias and need for absence of such attitude on the part of the adjudicating authority, if one reads the letter dated 26th September, 2008 and particularly the above quoted observations therefrom, it obviously discloses that, the adjudicating authority in the matter in hand had pre-judged the issue relating to the claim for cross-examination of witnesses by the appellants inasmuch as that the authority had concluded that the documentary evidence on record excluding the statement of the witnesses was available to support the charges made against the appellants by the Department. With this approach, can the adjudicating authority be expected to perform the function of such authority impartially and without any bias or prejudice? As rightly pointed out by the learned advocate for the appellants, the letter dated 26th September, 2008 reveals preconceived opinion on the material issue in the matter which clearly reveals bias mind.

17. The contention on the part of the respondents that the quasi-judicial authority can rely upon the information gathered through their own sources without even being made available to the assessee cannot be accepted. The decision of the Tribunal in that regard, sought to be relied upon, is contrary to the law laid down by the Apex Court. The Apex Court in the case of **A.K. Kraipak vs Union of India**, AIR 1970 Supreme Court 150, had clearly held that "Quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably". It was further held that, "If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative

enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries". Obviously, therefore, even in quasi-judicial enquiries the rules of natural justice are required to be complied with. Undoubtedly, to what extent the same would be attracted will depend upon the facts and circumstances of each case. However, it cannot be said that any material brought to the notice of the adjudicating authority can be relied upon in support of the charges against the assessee even without bringing the same to the notice of the assessee and without giving opportunity to the assessee to put forth his/her say in relation to the same.

18. It was also sought to be contended that there is no justification for allowing the appellants to raise the point which is sought to be raised in relation to the letter dated 26th September, 2008 at this late stage. It is settled law that, all the interlocutory orders get merged in the final order passed in any proceedings. It is always left to the choice of a party to challenge the interlocutory order either immediately after it is passed or to reserve his/her right to challenge the same along with the final order. Merely because one of the parties to the proceedings does not challenge the interim order immediately after it is passed, its right to challenge the same along with the final order is not taken away. Being so, merely because the appellants did not react to the order dated 26th September, 2008 immediately after the

receipt of copy thereof that cannot prevent them from challenging the same along with the final order. Viewed from this angle, the contention sought to be raised in that regard on behalf of the respondent cannot be accepted.

19. Before we part with the matter, it is, however, to be noted that, the appellants themselves are to be blamed for the delay in the matter. It is true that there is a voluminous record, however, merely because there is voluminous record it cannot justify unreasonably long period to prepare the reply. Undoubtedly the documents are in relation to the activities of the appellants themselves. Being so, all the materials are within their knowledge and, therefore, there is no justification to give undue long period to the appellants in this regard. Undoubtedly, the reply filed on 6th October, 2008 cannot be treated as detailed reply. In the facts and circumstances of the case, not to have a second round of litigation in the matter, we permit the appellants to file further detailed reply, if they so desire, on or before 20th October, 2009, and thereafter the adjudicating authority to proceed with the matter.

20. In the result, therefore, the appeals are allowed on the limited ground, as above, without expressing any opinion on the merits of the case. The impugned order is, therefore, set aside. The appellants are permitted to file detailed reply, if any, to the show cause notice on or before 20th October, 2009 and thereafter the Commissioner shall proceed with the matter and dispose of the same as expeditiously as possible, and in any case, before 31st March, 2010. It is made clear that none of the appellants shall be entitled to seek

adjournment for more than three times in the matter. At the same time, all the appellants are expected to cooperate with the Commissioner to dispose of the matter as expeditiously as possible. Needless to say that, in order to avoid further complication in the matter, we expect the matter to be dealt with by some other Commissioner and preferably in that regard, with the consent of the parties, we direct the matter to be placed before the Commissioner at Indore, for disposal thereof bearing in mind the observations hereinabove.

21. The appeals stand disposed of in the above terms.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(B.S.V. MURTHY)
MEMBER (TECHNICAL)

Golay

