ORISSA HIGH COURT: CUTTACK

AFR **W.P.(C) NO. 37472 OF 2023**

In the matter of an application under Article 226 of the Constitution of India.

M/s. Neelachal Ispat Nigam Ltd.

..... Petitioner

-Versus-

Union of India and others ..... Opp. Parties

For petitioner : Mr. T. Gulati, Sr. Advocate along with M/s. Jnanesh Mohanty, S. Gumansingh and S. Mohanty, Advocates

For opp. parties : Mr. T.K. Satapathy, Sr. Standing Cousnel along with Mr. Avinash Kedia, Jr. Standing Counsel for GST & Central Excise

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE G. SATAPATHY

Date of Hearing: 09.05.2024:: Date of Judgment : 14.05.2024

DR. B.R. SARANGI, J. M/s. Neelachal Ispat Nigam Limited, a Joint Venture Company registered under the provisions of Companies Act, 1956 and promoted by M/s MMTC

Limited and Industrial Promotion & Investment Corporation of Orissa Limited (IPICOL), having its factory premises located at Kalinga Nagar Industrial Complex, Duburi in the district of Jajpur, Odisha, having Central Excise Registration Certificate No. AAACN9433BXM001, engaged in manufacturing of 'Pig Iron' and 'Billet' falling under Chapter-72 and 'Coke & Crude Tar', falling under Chapter-27 of the First Schedule to the Central Excise Tariff Act, 1985, has filed this writ petition seeking to quash the demand-cum-show cause notice dated 10.09.2008 under Annexure-2 issued by the opposite party no.2; the consequential notices dated 05.12.2017 and 05.01.2018 issued under Annexure-3 (Colly.); and also the Order-in-Original dated 04.09.2023 under Annexure-9, whereby the demand made in the show cause notice dated 10.09.2008 has been confirmed.

2. The factual matrix of the case, in a nutshell, is that the petitioner, being a Public Limited Company, is primarily engaged in the manufacturing of 'Pig Iron' and 'Billet' falling under Chapter-72 and 'Coke & Crude Tar'

falling under Chapter-27 of the First Schedule to the Central Excise Tariff Act, 1985 in its factory located in Kalinga Nagar Industrial Complex, Jajpur. Another company, namely, M/s. Konark Met Coke Limited (KMCL), also situated in the same complex, has set up a Metallurgical Coke Plant along with a Captive Power Plant. The electricity generated was captively used by M/s. KMCL as well as by the Petitioner. M/s. KMCL is the manufacturer of Metallurgical Coke, Pearl Coke, Breeze Coke falling under Chapter-27 and Ammonium Sulphate falling under Chapter-31 of the First Schedule to the Central Excise Tariff Act, 1985, having Central Excise Registration Certificate No. 1/Ch.27&31/KMCL.JPR/99 dated 01.03.1999. Subsequently, M/s KMCL amalgamated with the petitioner with all its assets and liabilities with effect from 08.12.2004, pursuant to the order dated 05.11.2004 passed by this Court in COPET No. 26 of 2004. Paragraphs-2 and 3 of the said order dated

05.11.2004 passed in COPET No. 26 of 2004 reads as under:-

> *"Para-2: That all the property, rights and powers of the transferor company specified in the scheme of amalgamation annexed hereto and all the other property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 394(2) of the Companies Act, 1956 be transferred to and vest in the transferee company for all estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same;*
>
> *Para-3: That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the transferee company."*

2.1. M/s KMCL on the date of merger was having unutilized Cenvat Credit balance amounting to Rs.39,17,30,118/ - (Rs.1,14,41,688/- on inputs and Rs.38,02,88,430/- on capital goods) in its Cenvat account. Consequent upon merger of M/s. KMCL with the petitioner, on the application of the petitioner dated 22.12.2004, the Jurisdictional Asst. Commissioner, Balasore Division, vide his letter dated 24.12.2004,

allowed the petitioner to take back the unutilised Cenvat credit of Rs.39,17,30,118/- available with M/s. KMCL.

2.2. During verification of records by AG (Audit), the petitioner could not produce any documents evidencing physical transfer of Inputs/Capital Goods from M/s. KMCL to the petitioner. The petitioner, in their statement dated 12.09.2007 recorded before the Jurisdictional Range Officer, against summons issued under Section 14 of the Central Excise Act, 1944, stated that complying with the direction of the this High Court, M/s. KMCL was merged with the petitioner with effect from 08.12.2004. All assets and liabilities were taken over by the amalgamated company as on that date. The company took possession of the assets and necessary entries in the asset register/bin card were made. After hearing both sides, i.e., Creditors and Shareholders, this Court had given its verdict for merger of both the companies as mentioned above. Therefore, with the necessary permission of the Jurisdictional Assistant Commissioner, Central Excise, Customs & Service Tax,

Balasore Division, Balasore and as per the order of this Court, the petitioner has taken the Cenvat Credit lawfully. But, on the alleged contravention of the provisions of Rule 10 (1) and (3) of the Cenvat Credit Rules, 2004, as the petitioner had never disclosed this fact to the Department by any communication and it is only during verification of relevant documents of the petitioner by AG, Audit the matter came to the knowledge of the Department, it was thus presumed that the petitioner knowingly/ intentionally suppressed all the information in respect of their wrong availment of Cenvat Credit from the Department. It was also observed that the aforesaid credit of Rs.39,17,30,118/- availed by the petitioner is recoverable from it, along with interest due thereon, under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A and 11AB of the Central Excise Act, 1944 ("the Act" in short).

2.3. In the light of the above observation and allegations, a show cause notice dated 10.09.2008 proposing the following was issued:-

"(i) The Cenvat Credit amounting to Rs.39,17,30,118/- (Rs.1,14,41,688/- on inputs and Rs.38,02,88,430/- on capital goods) wrongly availed by the Noticee shall not be recovered from them under the provisions of rule 14 of the CCR read with Section 11A(1) of the Act;

(ii) Interest at the appropriate rate till the date of payment shall not be charged under Section 11AB of the Act; and

(iii) Penalty shall not be imposed on it under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Act for its said legal infractions."

2.4. The said show cause notice was not received by the petitioner. However, personal hearing of the case was fixed to 22.12.2017, i.e., after a lapse of more than 9 years from the date of issue of the impugned notice. As the impugned show cause notice dated 10.09.2008 was not received by the petitioner, the Commissioner was approached by the petitioner to provide a copy of the same, along with supporting documents, enabling the petitioner to file its reply. Another date of personal hearing was fixed to 08.01.2018, vide communication dated 05.01.2018, which was received by the petitioner on 10.01.2018. The petitioner was given a copy of the show cause notice by the office of the Commissioner,

Central Excise, Bhubaneswar-I on 08-01.2018 and was asked to file the reply by the last week of January, 2018.

2.5. Needless to mention here, the dispute involved in the impugned show cause notice relates to the period 2004-05. The related documents, being 14 years old, were not easily traceable, for which the petitioner was unable to file its reply by the end of January, 2018. After thorough search of the records, the petitioner with much difficulty was able to locate the relevant records and filed the reply to the notice of show cause dated 10.09.2008, contending that the notice of show cause has been issued with reference to the permission accorded by the Jurisdictional Assistant Commissioner, Central Excise, Customs & Service Tax, Balasore Division, vide his letter dated 24.12.2004, under which he allowed the petitioner to take the Cenvat Credit of Rs.39,17,30,118/- lying un-utilized in the account of erstwhile M/s KMCL in terms of Rule 10(1) of the Cenvat Credit Rules, 2004, consequent upon its amalgamation with the petitioner

and pursuant to order of this Court dated 05.11.2004 in COPET No.26 of 2004.

2.6. Therefore, on the basis of a show cause notice issued on 10.09.2008 and after lapse of about 10 years from the date of issuance of show cause notice, notice for personal hearing was issued and the final Order-in-Original was passed on 04.09.2023, after a period of 15 years and, therefore, the present writ petition.

3. Mr. Tarun Gulati, learned Senior Advocate appearing along with Mr. Jnanesh Mohanty and Ms. Gumansingh, learned counsel for the petitioner contended that even though a show cause notice was issued on 10.09.2008, the same was not served on the petitioner and for the first time, on 05.12.2017, the same was served on the petitioner. In compliance of the show cause notice, the petitioner gave its reply, but no action was taken thereon nor the same was decided and, as such, it was kept pending and after lapse of six years, the order dated 04.09.2023 was passed, whereas the matter should have been decided within a reasonable

period. It is contended that initially the show cause notice was issued on 10.09.2008, which took 9 years to bring to the notice of the petitioner vide letter dated 05.12.2017. Thereafter, even if reply was filed, the same was kept pending for six years and ultimately the final order was passed on 04.09.2023. Thereby, the entire claim is grossly barred by limitation and belated claim cannot be considered. It is further contended that the audit objection was contested and was taken out after the circular dated 08.04.2016, for which the same is not the valid explanation for delay. The inordinate delay in adjudication of a show cause notice is fatal to its validity, since it causes prejudice. The words "where is it is possible to do so" cannot be construed to be without any meaning. Further, it is contended that the department was bound to inform the petitioner of the case to the call book and if the department was aggrieved with an order, it could have challenged the same and there cannot be two adjudications on the same issue. Moreover, the extended period of limitation cannot be invoked when

the Department was aware of the facts of the case and had in fact given approval. To substantiate his contention, learned Senior Advocate appearing for the petitioner has relied upon the judgment of this Court in the case of ***M/s IDCOL Ferro Chrome & Alloys Ltd., Ferro Chrome Project v. Commissioner, Central Excise***, [W.P.(C) No. 11809 of 2017 disposed of on 02.01.2023]; judgment of the Punjab and Haryana High Court in the case of ***M/s Shree Baba Exports v. Commissioner, GST & Central Excise***, CWP No. 11860 of 2021 disposed of on 15.03.2022, which has been confirmed by the apex Court in S.L.P. (C) No. 12376 of 2022 disposed of on 29.07.2022; judgments of the apex Court in the cases of ***Commissioner, CGST and Central Excise v. Shree Baba Exports***, SLP (C) No. 12376 of 2022 disposed of on 29.07.2022; and ***Kamaladitya Construction (P) Ltd. v. Principal Commissioner of CGST and Central Excise***, 2023 SCC OnLine Jhar 1537. It is contended that the judgments passed by this Court in the case of ***M/s IDCOL Ferro Chrome & Alloys***

Ltd. and ***Ferro Chrome Project*** (supra) have also taken note of the judgments of this Court in the cases of ***Maxcare Laboratories Ltd. v. Joint Commissioner, CGST, Central Excise & Custom***, 2021 (378) ELT 401 (Ori.) and ***M/s Orissa Mining Corporation Ltd. v. Sales Tax Officer,*** (W.P.(C) No. 13195 of 2010 disposed of on 15.12.2021); and also ***ATA Freight Line (I) Ltd v. Union of India & Ors***., 2022 SCC OnLine Bom 648 (Bombay High Court), which has been confirmed by the apex Court in S.L.P. (C) No. 828 of 2023 disposed of on 10.02.2023; ***M/s. Siemens Ltd. v. Union of India and Anr***, W.P.(C) No. 6757 of 2022 decided on 03.10.2023 (Bombay High Court); ***Duncans Agro Industries Ltd v. CCE***, (2006) 7 SCC 642; ***Anand Nishikawa Co. Ltd v. Comm. Of Central Excise,*** (2005) 7 SCC 749; ***Honda Siel Power Products v. Union of India and another***, 2019 SCC OnLine All 5341; ***Parle International Limited v. Union of India and Others***, Writ Petition No. 12904 of 2019 disposed of 26.11.2020 (Bombay High Court); ***Eveready Industry India Limited v. Customs,***

Excise and Service Tax Appellate Tribunal and others, 2016 SCC OnLine MAD 6066 (Madras High Court) ; ***Tata Steel Limited v Union of India and others***, W.P.(T) No. 826 of 2023 disposed of on 13.06.2023 (Jharkhand High Court); ***BT (India) Pvt. Ltd v. Union of India and another***, 2023 SCC OnLine DEL 7143 (Delhi High Court).

4. Mr. T.K. Satapathy, learned Sr. Standing Counsel appearing along with Mr. A. Kedia, learned Jr. Standing Counsel for GST & Central Excise, raised preliminary objection with regard to maintainability of the writ petition. It is contended that the petitioner has challenged the reassessment order before this Court under Article 226 of Constitution of India, which is not maintainable because the order is appealable under Section 35-B before the learned Custom and Excise and Service Tax Appellate, Tribunal. Petitioner has approached this Court without exhausting effective alternative remedies available to it under law raising all factual contentions which can be redressed before

statutory authorities under the Act. It is further contended that the show cause notice dated 10.09.2008 was issued to the petitioner and sent by speed post to the petitioner's registered address. During the course of personal hearing held on 08.01.2018, the petitioner submitted that their copy of the show cause notice has got misplaced and hence they are not able to file reply. As per the request of the petitioner, a photocopy of the show cause notice was handed over to it under acknowledgement. He further contended that the impugned show cause notice has been issued based on audit para/objection as per Board's circular dated 10.03.1983. Since the audit para/objection was not admitted by the Department as per Board's circular dated 14.12.1995 and 30.03.98, the show cause notice was not adjudicated and transferred to call book. The audit para was converted to statement of facts vide Para 2 of I.R.No.20/2005-06. Later on, CBEC, vide circular no. 1023/11/2016-CX dated 08.04.2016, issued detailed guidelines about "Adjudication of Show Cause Notices,

issued on the basis of CERA/CRA objection". At Para 6 of the said circular, the Board has clarified that the show cause notices relating to audit objections figuring in the list should not be adjudicated and further action should be taken in consultation with the Commissioner. It was further contended, as per the General Ledger for the period from 01.04.2004 to 31.03.2005, in Voucher No.9877 & 9878 both dated 9.12.2004, the Cenvat credit of Rs.35,29,10,811.16/- and Rs.3,88,83,006.92/- respectively have been shown against debit with a note that "merger of KMCL, Transaction for the period 01.04.2004 to 8.12.2004". The ER-I return stated to have been filed with the Jurisdictional Range Superintendent is not available in the case file. Therefore, it is contended that the show cause notice and the resultant Order-in-Original deal with transfer of Cenvat Credit from M/s KMCL to the petitioner not related to availment of credit by M/s KMCL. The cause of action against the Order-in-Original lies with the Central Excise & Service Tax Appellate Tribunal (CESTAT),

Eastern Zonal Bench, Kolkata under Section 35-B of the Central Excise Act, 1944, therefore, the writ petition before this Court is liable to be dismissed. To substantiate his contention, learned Senior Standing has placed reliance on ***Whirlpool v. Registrar of Trade Marks***, (1998) 8 SCC 1; ***State of Maharashtra and others v Greatship (India) Limited***, MANU/ SC/ 1206 /2022; ***United Bank of India v. Satyawati Tondon***, MANU/SC/0541/2010 : (2010) 8 SCC 110; and ***Jindal Steel & Power Ltd. Vs Union of India*** (W.P.(C) No. 810 of 2016 decided on 02.05.2016)

5. This Court heard Mr. Tarun Gulati, learned Senior Advocate appearing along with Mr. Jnanesh Mohanty and Ms. Gumansingh, learned counsel for the petitioner; and Mr. T.K. Satapathy, learned Sr. Standing Counsel along with Mr. A. Kedia, learned Jr. Standing Counsel for Revenue in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the

parties, the writ petition is being disposed of finally at the stage of admission.

6. As would be evident from the factual matrix, as delineated above, the notice of show cause was issued on 10.09.2008, which came to the knowledge of the petitioner on 05.12.2017, when a personal hearing notice pursuant to the show cause notice dated 10.09.2008, was issued to the petitioner. The same was followed by another personal hearing notice dated 05.01.2018. It is only after issuance of these personal hearing notices, the petitioner became aware of the proceedings and obtained a copy of the show cause notice dated 10.09.2008 on 08.01.2018, i.e., after a lapse of more than 9 (nine) years from the date of show cause notice. The petitioner filed its reply indicating therein that the show cause notice was sought to be adjudicated after a considerable lapse of time, without any justification and without any communication to the petitioner during the intervening period and, thereby, the delay in adjudication of the show cause notice dated

10.09.2008 is fatal to the proceedings and subsequent issuance of notices for personal hearing after a lapse of about 10 years from the date of issuance of the show cause notice is contrary to the mandate of Sub-section (11) of Section 11A of the Central Excise Act, 1944. For a just and proper adjudication of the case, Section 11A of the Central Excise Act, 1944 is quoted hereunder:-

> *"SECTION 11A OF THE CENTRAL EXCISE ACT, 1944*
>
> *"SECTION 11A- Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –*
> *(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty ,-*
> *xxx xxx xxx*
> *(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of*
> *(a) fraud; or*
> *(b) collusion; or*
> *(c) wilfulmis-statement; or*
> *(d) suppression of facts; or*
> *(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.*
> *by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he*

should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

(5) Where, during the course of any audit, investigation or verification, it is found that any duty [has not been levied or paid or has been] short - levied or short - paid or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-clause (4) but the details relating to the transactions are available in the specified records, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty,

xxx xxx xxx

(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –

(a) within six months from the date of notice where it is possible to do so, in respect of cases falling under subsection (1);

(b) within two year [substituted for one year w.e.f. 14-05-2016] from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to subsection (4) or sub-section (5).

xxx xxx xxx"

7. On perusal of the aforementioned provisions, it is made clear Section 11A (11) of the Central Excise

Act, 1944 envisages that the Central Excise Officer shall determine the amount of duty of excise under Sub-section (10) within six months from the date of notice where it is possible to do so, in respect of cases falling under Sub-section (1), i.e., where no suppression of facts etc. are alleged) and within one year (substituted by two years by the Finance Act, 2016 w.e.f. 14.05.2016) from the date of notice, where it is possible to do so, in respect of cases falling under the Sub-section (4) (i.e. where suppression of facts etc. are alleged). Therefore, both the notices for personal hearing issued to the petitioner on 05.12.2017 and 05.01.2018 under Annexure-3 (Colly.) are contrary to the mandate of Section 11A of the Central Excise Act, 1944 and thus, the adjudication of the show cause notice is barred by limitation. Keeping the show cause notice pending for a period of more than 9 years is contrary to the mandate of Section 11A(11) of the Central Excise Act, 1944 and, thereby, unreasonable, arbitrary, oppressive and violative of Article 14 of the Constitution of India.

8. There is no dispute that M/s. KMCL, on the date of its merger with the petitioner, had an unutilized Cenvat Credit balance of Rs. 39,17,30,118/ - and the petitioner filed an application on 22.12.2004 before the Jurisdictional Officer for transfer of the said unutilised Cenvat credit, in terms of Rule-10 of the Cenvat Credit Rules, 2004. The relevant provision of Rule-10 is quoted herein below:-

> *"**RULE 10. Transfer of CENVAT credit**. -*
>
> *(1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.*
>
> *(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.*
>
> (3) *The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or*

ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise."

The application of the petitioner was allowed vide letter of the authority dated 24.12.2004. Therefore, if the amount has been transferred with the knowledge of the competent authority after being satisfied, subsequently it cannot turn around and take a different plea by issuing a notice of show cause on 10.09.2008 without serving a copy on the petitioner. However, owing to personal hearing notices issued on 05.12.2017 and 05.01.2018, it has been brought to the knowledge of the petitioner after long lapse of nine years and on receipt of the same, the petitioner filed show cause reply, but the same has not been taken into consideration in its proper perspective.

9. Mr. T.K. Satapathy, learned Sr. Standing Counsel for Revenue vehemently urged before this Court that the petitioner has not raised the question of limitation in his show cause reply. Therefore, the action taken by the authority is well justified. But it is brought

to our notice by Mr. Gulati, learned Senior Advocate that in post hearing written submission in Demand-cum-Show Cause dated 10.09.2008, which has been placed on record as Annexure-8 at paragraph-3 it has been stated as follows:-

> *"It is submitted that the limitation for serving of SCN under Section 11A of the CEA 1944, even in cases where suppression, fraud etc. are alleged, is 5 Years from the period of dispute, whereas in the instant case, the impugned SCN was served on the notice after more than 13 Years; hence the impugned SCN is hopelessly barred by Limitation, and liable to be dropped on this ground alone."*

Therefore, there is no iota of doubt that the petitioner has raised the question of limitation by filing show cause reply on 16.08.2023, but the Order-in-Original passed by the authority on 04.09.2023 under Annexure-9 has not spelt about the question raised with regard to limitation, though the same has been urged before the authority concerned.

10. In ***Anand Nishikawa*** (supra), the apex Court at paragraphs-23, 24, 25, 26, 27, 29 and 30 observed as follows:-

"23. In the impugned order, CEGAT on perusal of the correspondence between the appellant and the department was unable to find any disclosure in writing by the appellant with respect to post-forming processes like notching, drilling etc. From the materials on record which were produced before the authorities and also from the orders of the CEGAT and the Commissioner, it can be seen that the department had the opportunity to inspect the products of the appellants and in fact, the factory of the appellants was inspected by them. It may be true that the appellants might not have disclosed the post-forming process in detail but from the correspondence and other materials on record, it cannot be conceived that the authorities were not aware of the facts as, we gather from the materials on record, admittedly, samples were collected by the Department and even after the samples were collected and inspected, classification as supplied by the appellant in respect of the products in question was approved by them.

24. Further more, it is also evident from the record that the flow-chart of manufacturing process which was submitted to the Superintendent of Central Excise, Rampur on 17.5.1990 clearly mentioned the fact of post forming process on the rubber [See page 15 of the Order of CEGAT]. The CEGAT in its order has also recognized the fact of collection of some relevant samples by the excise authorities on 25.9.1985 and 22.1.1988. [See paragraphs 7.1 & Page 14 of the Order of CEGAT].

25. In this view of the matter, we are unable to persuade ourselves to agree with the finding of the CEGAT as admittedly, the products of the appellant were inspected from time to time and the department was aware of the manufacturing process of the products although the appellant



might not have disclosed the post forming process in detail.

26. In Tata Iron & Steel Co. Ltd. vs. Union of India & Ors [1988 (35) ELT 605 (SC)], this Court held that when the classification list continued to have been approved regularly by the department, it could not be said that the manufacturer was guilty of "suppression of facts". As noted herein earlier, we have also concluded that the classification lists supplied by the appellant were duly approved from time to time regularly by the excise authorities and only in the year 1995, the department found that there was "suppression of facts" in the matter of post forming manufacturing process of the products in question. Furthermore, in view of our discussion made herein earlier, that the department has had the opportunities to inspect the products of the appellant from time to time and, in fact, had inspected the products of the appellant. Classification lists supplied by the appellant were duly approved and in view of the admitted fact that the flow-chart of manufacturing process submitted to the Superintendent of Central Excise on 17.5.1990 clearly mentioned the fact of post-forming process on the rubber, the finding on "suppression of facts" of the CEGAT cannot be approved by us. This Court in the case of Pushpam Pharmaceutical Company vs. Collector of Central Excise, Bombay [1995 Supp (3) SCC 462], while dealing with the meaning of the expression "suppression of facts" in proviso to section 11A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and willful to evade payment of duty. The Court, further, held : -

> *"In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed*

deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. Vs. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to section 11A of the Act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to the CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts". In Densons Pultretaknik vs. Collector of Central Excise [2003 (11) SCC 390], this Court held that mere classification under a different sub-heading by the manufacturer cannot be said to be willful misstatement or "suppression of facts". This view was also reiterated by this Court in Collector of Central Excise, Baroda, vs. LMP Precision Engg.Co.Ltd. [2004 (9) SCC 703]

xxx xxx xxx

> *29. Similarly, in the case of Collector Central Excise, Jamshedpur Vs. Dabur India Ltd., [2005 (121) ECR 129 (SC)], this Court held that the extended period of limitation was not available to the Department as classification lists filed by the Assessee were duly approved by the authorities from time to time. In that decision this Court followed its earlier judgment in O.K. Play (India) Ltd., vs. Collector of Central Excise, Delhi-III, (Gurgaon) [2005 (66) RLT 657 (SC)], held that in cases where classification lists filed by the Assessee were duly approved, the extended period of limitation would not be available to the Department.*
>
> *30. For the reasons aforesaid, we are of the view that the CEGAT was not justified in holding that the extended period of limitation would be available to the Department for initiating the recovery proceedings under section 11A of the Act on a finding that there was suppression of facts by the appellant. Accordingly, it was not open to the excise authorities to invoke proviso to section 11A of the Act and therefore, the demand of the Revenue must be restricted to six months prior to the issue of notice dated 19.10.1995 instead of five years. In view of this conclusion, it is not necessary for us to consider the question of applicability of the classification lists namely of 4008.29 and 4016.19 and the question of MODVAT facilities. Accordingly, in our opinion, CEGAT came to a wrong conclusion for wrong reasons and therefore, we allow this appeal and set aside the judgment and order of the CEGAT and restore the order of the Commissioner."*

11. The entire proceeding was initiated on the basis of AG Audit, though the same was contested and

was taken out after the circular dated 08.04.2015, for which there cannot be a valid explanation for delay. This Court in ***IDCOL Ferro Chrome*** (supra) at paragraphs-6, 8, 9 and 10 observed as follows:-

> *6. In reply to the writ petition, there is no valid explanation offered by the Department as to what prompted it to shift the case to the Call Book on 28th April, 1999 and then retrieved it from the said Call Book 16 years later, all of a sudden. The precise averment in the counter affidavit in this regard reads as under:*
>
> > *"4. That with regard to the averments made in paragraph 1 of the Writ petition, it is humbly submitted that no time limit has been prescribed for section 11A(2) of the Central Excise Act, 1944. The said case has been transferred to Call Book on 28.04.1999 and kept in Call Book as the matter was arose out of objection by the office of the Accountant General, Odisha (AG(O)) and the central Excise Department (Opposite Party) contested the matter with it. However. since no decision has been taken by the Office of the Accountant General, Odisha (AG(O)), even after several letters from the Opposite Parties to settle the issue, the said Show Cause Notice was retrieved from the Call Book on 15.07.2016 based on the Board's Circular No. 1023/11/2016-CX dated 08.04.2016 and initiated the process of Adjudication. A copy of the Board's Circular No. 1023/11/2016-CX dated 08.04.2016 is annexed herewith as ANNEXURE-A/1."*
>
> *xxx xxx xxx*



*8. In **Maxcare Laboratories Ltd.** (supra), in more or less identical circumstances, this Court quashed the SCN and the further notice fixing the date of hearing. In the presence case also the Court is unable to find any valid explanation offered by the Department in delaying in issuing the initial SCN under Section 11A of the CE Act, 4 years after the period of demand and then, more importantly, taking 16 years to retrieve the matter from the Call Book. As noticed by this Court in Maxcare Laboratories Ltd. (supra), in similar circumstances, the Supreme Court of India in **Government of India v. Citedal Fine Pharmaceuticals** 1989 (42) ELT 515, in the context of proceedings for recovery of excise duty on medicinal toilet preparations observed as under:*

> *"While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."*

*9. Likewise, in **CCE v. Cemphar Drugs and Liniments** 1989 (40) ELT 276 (SC), the Supreme Court observed as under:*

"In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to subsection 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, beyond the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case."

10. Other High Courts too have invalidated SCNs where attempts were made by the Department to revive a matter sent to the Call Book several years later. These decisions include ***Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India*** *2017 (352) ELT 455 (Guj.) and* ***Meghamani Organics Ltd. v. Union of India*** *2019 (368) ELT 433 (Guj.)"*

12. It is well settled in law that inordinate delay in adjudication of a show cause notice is fatal to its validity since it causes prejudice. In ***Kamaladitya Construction*** (supra), the Jharkhand High Court at paragraphs-21, 22, 25, 30, 31, 32 and 44 held as follows:-

"*21. At this stage it is pertinent to note that the words "where it is possible to do so" is elastic only when there are reasonable grounds beyond the control of the adjudicating authority to conclude adjudication within the time frame given under Section 73(4B) and not otherwise.*

22. If there is no reasonable explanation, the elasticity would not be available. It is fairly well settled that legislature never wastes words or says anything in vain. The insertion of sub-section (4B) by Finance (No. 2) Act, 2014 is not without any purpose or it is not a dead letter.

xxx xxx xxx

25. Similar provisions exist under Section 11A (11) of the Central Excise Act, 1944 and Section 28(9) the Customs Act, 1962. The period of limitation of 6 months or 1 year under Section 73(4B) of the Chapter V of the Finance Act, 1994 be extended to more than seven years as is done in the instant case.

xxx xxx xxx

30. In the case of Shree Baba Exports Vs. Commissioner of GST & Central Excise reported in (2022) 72 PHT 35 (P&H) [Para 13] it is held by the Punjab & Haryana High Court that the expression "where it is possible to do so" does not mean that the time prescribed can be extended perpetually and the time limit cannot be taken to be directory except in a case where the authority has a reason to offer as an explanation for extending the said time limit.

31. In the case of Meghmani Organics Ltd. Vs. UOI reported in 2019 (368) E.L.T. 433 (Guj.) [Para 24] it is held by the Gujarat High Court that when the legislature has used the expression "where it is possible to do so" it means that if in the ordinary course it is possible to determine the amount of duty with the specified time frame, it should be so done. Similar views have been held in the case of Siddhi Vinayak Put. Ltd Vs. UOI reported in 2017 (352) E.L.T. 455 (Guj.)

"19. Reliance was placed upon the decision of the Supreme Court in the case of Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225, and more particularly to the contents of paragraph 86 thereof, wherein the Supreme Court has laid down certain propositions which are meant to serve as guidelines. Reference was made to clause (3)(c) thereof, wherein the Court has observed that the concerns underlying the right to speedy trial from the point of view of the accused are (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise. It was submitted that the said decision though rendered in the context of the provisions of the Code of Criminal Procedure would also be applicable to the facts of the present case, inasmuch as, the petitioner also is entitled to the right of speedy adjudication of the show cause notice issued against it and that the delay would result in disappearance or non-availability of witnesses and other documentary evidence on which the petitioner may place reliance. It was submitted that in case of indirect taxation, the sooner the decision is taken, the assessee can recover its dues from the Revenue or the Revenue from the assessee, as the case may be. It was submitted that if transferring of a matter to the call book to await adjudication by the higher authority is taken to its logical end, in a given case, if the Appellate Tribunal comes to a particular view and the aggrieved party approaches the High Court and thereafter the Supreme Court, the matters would remain in the call book for years together. It was submitted that the statute does not contemplate such a course of action."

> *32. In the case of GPI Textiles Ltd. Vs. UOI reported in 2018 (362) E.L.T. 388 (P&H) [Para 17] the Hon'ble Punjab & Haryana High Court has held that although the words 'where it is possible to do' has been used, that will not stretch the period to decades."*

In the aforesaid judgment, the Jharkhand High Court also referred to the decision of Punjab and Haryana High Court in case of ***M/s. Shree Baba Exports*** (supra), which has been confirmed by the apex Court in S.L.P.(C) No. 12376 of 2022 disposed of on 29.07.2022.

13. Much argument was advanced with regard to transfer of the case to the call book. But fact remains, it has not been brought to the notice of the petitioner at any point of time, though the obligation casts on the department to inform the petitioner of transfer of the case to the call book. In ***ATA Freights Line*** (supra), the High Court of Bombay, at paragraphs- 23, 24, 27 and 29 held as follows:-

> "*23. Neither the affidavit-in-reply nor the arguments advanced by the learned counsel for the respondents indicated that the petitioner was at any point of time informed about the transfer of file relating to the show cause notices in question to call book prior to the date of the petitioner's letter asking for closure report.*

24. This Court in case of Parle International Ltd. (supra) after considering the identical facts and after adverting to the judgment in cases of Bhagwandas S. Tolani (supra), Sanghvi Reconditioners Pvt. Ltd. (supra) and Reliance Industries Ltd. (supra) held that that a show-cause notice issued a decade back should not be allowed to be adjudicated upon by the revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. Larger public interest requires that revenue should adjudicate the show-cause ppn 12 wp-3671.21_j_.doc notice expeditiously and within a reasonable period. It is held that keeping the show-cause notice in the dormant list or the call book, such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the revenue. This Court was accordingly pleased to quash and set aside the show cause notices which were pending quite some time.

xxx xxx xxx

27. It is held that the respondent having issued the Show-Cause notice, it is their duty to take the said Show-Cause notice to its logical conclusion by adjudicating upon the said Show-Cause Notice within a reasonable period of time. In view of gross delay on the part of the respondent, the petitioner cannot be made to suffer. This Court accordingly was pleased to quash and set aside dated 16th September 2005 in that matter. The principles of law laid down by this Court in the above referred judgment would apply to the facts of this case. We are respectfully bound by the principles of law laid down by this Court in the said judgment. We do not propose to take a different view in the matter.

xxx xxx xxx

29. In our view, since the respondents were totally responsible for gross delay in adjudicating the show cause notices issued by the respondents causing prejudice and hardship to the petitioner and have transferred the show cause notices to

call book and kept in abeyance without communication to the petitioner for more than 7 to 11 years, the respondents cannot be allowed to raise alternate remedy at this stage. Be that as it may, no order has been passed by the respondents on the said show cause notices. The question of filing any appeal by the petitioner therefore did not arise."

The said judgment of the Bombay High Court has been confirmed by the apex Court in S.L.P (C) No. 828 of 2023 disposed of on 10.02.2023.

14. A serious contention was raised by learned Senior Standing Counsel for Revenue that due to availability of alternative remedy, i.e., filing of appeal under Section 35-B of the Act, the present proceeding is not maintainable.

15. In ***Whirlpool*** (supra), the apex Court held *"However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the*

exclusion of other available remedies unless such action of the State or its instrumental mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

16. In ***Greatship (India) Limited*** (supra), the apex Court at paragraph-14 of the judgment held as follows:-

> *"14. At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the petitioner straightway preferred writ petition under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of United Bank of India Vrs. Satyawati Tondon, MANU/ SC/ 0541/ 2010 : (2010) 8 SCC 110 in which this Court had an occasion to consider the entertainability of a writ petition under Article 226 of the Constitution of India by by-passing the statutory remedies, is required to be referred to. After considering the earlier decisions of this Court, in paragraphs 49 to 52, it was observed and held as under:*
>
> *"49. The views expressed in Titaghur Paper Mills Co. Ltd. vs. State of Orissa (1983) 2 SCC 433 were echoed in CCE v. Dunlop India Ltd. (1985) 1*



SCC 260 in the following words: (SCC p. 264, para 3)

> *"3. … Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."*

50. In Punjab National Bank v. O.C. Krishnan (2001) 6 SCC 569 this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed: (SCC p. 570, paras 5-6)

> *"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act'). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act.*

We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

51. In CCT v. Indian Explosives Ltd. [(2008) 3 SCC 688] the Court reversed an order passed by the Division Bench of the Orissa High Court quashing the show-cause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.

52. In City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala [(2009) 1 SCC 168] the Court highlighted the parameters which are required to be kept in view by the High Court while

exercising jurisdiction under Article 226 of the Constitution. Paras 29 and 30 of that judgment which contain the views of this Court read as under: (SCC pp. 175-76)

> *"29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.*
>
> *30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:*
>
> *(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
>
> *(b) the petition reveals all material facts;*
>
> *(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*
>
> *(d) person invoking the jurisdiction is guilty of unexplained delay and laches;*
>
> *(e) ex facie barred by any laws of limitation;*

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

17. In ***Jindal Steel*** (supra), this Court, considering the question of maintainability of writ petition, held that against any decision taken by Commissioner of Central Excise as adjudicating authority, appeal lies to appellate tribunal and accordingly dismissed the writ petition with a direction to file appeal before appellate tribunal by making pre deposit of 5% of demand.

18. Though the above judgments were referred to by Mr. Satapathy, learned Sr. Standing Counsel with regard to availability of alternative remedy, but in the

peculiar facts and circumstances of the case, since there is statutory infraction of adjudicating the dispute, inasmuch as, after long lapse of time of more than 15 years and without giving any reason to the objections raised by the petitioner in the show cause reply with regard to limitation, this Court does not deem it proper to relegate the petitioner to the forum for adjudication under Section 35-B of the Act. It is made clear that if with the knowledge of the authority the amalgamation has been made, pursuant to the order of this Court in a COPET case, after long lapse of the period prescribed under Section 11A of the Act, two proceedings cannot continue by issuance of notice of show cause.

19. In ***Eveready Industries*** (supra), the High Court of Madrass at paragraphs-38, 50 and 51 of the judgment held as follows:-

> *38. As we have seen from the language employed in Section 35E, which we have extracted above, a limited revisional jurisdiction is conferred upon the Principal Commissioner and Commissioner of Excise in Sub-Section (2) of Section 35E. This power is not actually to correct any error directly, on the part of an Adjudicating Authority. This power is available only for directing the*



Competent Authority to take the matter to the Commissioner (Appeals).

xxx xxx xxx

50. The very same argument now advanced by the Department to the effect that Sections 11A and 35E operate in two different independent fields was raised by them. After considering the issue elaborately and also after taking note of the decision in Asian Paints (India) Limited approved by the Supreme Court, this Court came to the conclusion in paragraph 23 as follows:

> *"In our opinion, there is no nexus between Section 11A and Section 35E. Section 11A does not indicate that the legislature intended to override Section 35E. Both sections have to be read harmoniously. In the present case, Annexure-I certificate has been issued in favour of the petitioners from time to time on executing B-8 security bond and on furnishing a bank guarantee. The Department has to follow the procedure under Section 35E for setting aside the Annexure-I certificate. Unless, the Annexure-I certificate is cancelled or rejected by the competent Authority, by following the procedure under Section 35E, it is not permissible for the respondents to invoke Section 11A of the Act. Therefore, we are of the considered opinion that the issuance of show cause notices is without jurisdiction and is liable to be struck down."*

51. We are of the considered view that the paragraph extracted above is a complete answer to the question of law now raised. Unfortunately, in none of the decisions relied upon by the learned Standing Counsel, the Courts were confronted with an order of adjudication passed under Section 11B on an application. Once an application for refund is allowed under Section 11B, the expression 'erroneous refund' appearing

in Sub-Section (1) of Section 11A cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under Section 11A(1). One Authority cannot be allowed to say in a collateral proceeding that what was done by another Authority was an erroneous thing. Therefore, the question of law has to be answered in favour of the appellant/assessee and the appeal deserves to be allowed.

20. In ***Parele International*** (supra), the question was raised with regard to adjudication of show cause notice dated 01.06.2006 and 28.11.2006 after 13 years. The Bombay High Court held the same as illegal, void and bad in law and quashed the same.

21. In ***Tata Steel*** (supra), in a fact akin to the present case, the Jharkhand High Court also quashed the show cause notices and notice of personal hearing and also common Order-in-Original.

22. In ***BT (India) Pvt. Ltd.*** (supra), the Delhi High Court had not accepted the plea of alternative remedy, taking into account the fact that the action was taken in gross violation of the principles of natural justice and undisputedly a violation of the principles of natural justice constitutes an exception to the self-imposed

restraint, which is exercised when called upon to invoke constitutional powers conferred by Article 226 of the Constitution. As such, the Delhi High Court found that the second respondent while considering the claim for refund has clearly acted in excess of the jurisdiction which could have been exercised and accordingly rejected the objection of the authority.

23. Considering the factual and legal aspects, as discussed in the foregoing paragraphs, this Court is of the considered view that the notice of show cause issued on 10.09.2008 under Annexure-2 and consequential personal hearing notices dated 05.12.2017 and 05.01.2018 under Annexure-3 (Colly.) issued after long lapse of 9 years from the issuance of show cause notice dated 10.09.2008 and the Order-in-Original dated 04.09.2023 under Annexure-9, whereby demand made in the show cause notice dated 10.09.2008 has been confirmed, cannot be sustained in the eye of law and the same are liable to be quashed and are hereby quashed.

24. The writ petition is accordingly allowed. But, however, in the facts and circumstances of the case, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

G. SATAPATHY, J. I agree.

(G. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 14th May, 2024, Arun