2024:JHHC:9348-DB

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 5161 of 2022

M/s. Bihar Foundry & Castings Ltd., through its Director Sri Gaurav Budhia ..... **Petitioner**

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue having his office at Central Secretariat, North Block, P.O & P.S. Vijay Chowk, New Delhi.

2. Central Board of Indirect Taxes and Customs, Government of India, Ministry of Finance, Department of Revenue North Block, P.O. & P.S. Vijay Chowk, New Delhi.

3. The Commissioner (Appeals), Central Goods and Services Tax, Central Excise & Customs, Central Revenue Building, Rajswa Vihar, Bhubaneswar, Odisha.

4. The Joint Commissioner, Commissionerate of Customs (Preventive), Central Revenue Building (GST Bhawan), Rajaswa Vihar, Bhubaneswar, Odisha. **...Respondents**

With

W.P. (T) No. 4340 of 2022

M/s. Bihar Foundry & Castings Ltd., through its Director Sri Gaurav Budhia ..... **Petitioner**

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue having his office at Central Secretariat, North Block, P.O & P.S. North Block, New Delhi.

2. Central Board of Indirect Taxes and Customs, Government of India, Ministry of Finance, Department of Revenue North Block, P.O. & P.S. North Block, New Delhi.

3. The Commissioner (Appeals), Central Goods and Services Tax, Central Excise & Customs, Central Revenue Building, Rajswa Vihar, Bhubaneswar, Odisha.

4. The Assistant Commissioner, Customs Division, Dhamra, P.O. & P.S. Dosinga, Bhadrak, Odisha. **...Respondents**

CORAM: **HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner	: Mr. K.Kurmy, Advocate Mr. N.K.Pasari, Advocate
For the Res.-CGST	: Mr. Amit Kumar, Advocate
For the Res.-UOI	: Mr. Anil Kumar, ASGI

<u>11/04.03.2024</u>

<u>Per Deepak Roshan J.</u>

Heard learned counsel for the parties. Since both these writ applications are inter connected and the issue involved is common; as such both are heard together and disposed of by this common judgment.

2. In writ application being W.P.(T) No. 5161 of 2022 the petitioner has made following prayers;

> *"**A.** For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Order-in-Appeal dated 10-08-2022 bearing No.113-114/CUS/CCP/2022 which is at Annexure -"1" of this writ petition passed by the Respondent No.3, in exercise of powers conferred under Section 128 read with Section 128A of the Customs Act, 1962 and holding/declaring that the said impugned Order is bad in law as is passed ignoring the mandatory provisions of Section 28 of the Customs Act, 1962;*
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> ***B.** For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Order-in-Original dated 19-11-2018 bearing No. CC(P)/BBSR/CUS/No-16/Joint Commissioner/2018 passed by the Respondent No.4 which is at Annexure-"2" of this Petition and holding/declaring that the said impugned Order is bad in law as is passed ignoring the mandatory provisions of Section 28 of the Customs Act, 1962 and also that it is barred by limitation under Section 28(9)(a) ibid;*
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> ***C.** For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Order-in-Original dated 19-11-2018 bearing No. CC(P)/BBSR/CUS/No-17/Joint Commissioner/2018 passed by the Respondent No.4 which is at Annexure-"3" of this Petition and holding/declaring that the said impugned Order is bad in law as is passed ignoring the mandatory provisions of Section 28 of the Customs Act, 1962 and also that it is barred by limitation under Section 28(9)(a) ibid,*
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> ***D.** For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Show Cause Notice dated 20-04-2018 bearing C. No. VIII (10)11/SCN/BSIL/CUS(P)/BBSR/2018/8187A issued by the Respondent No.4 in respect of the Bill of Entry No.260/HC/2011- 12 Dated 20-03-2012, which is at Annexure-"4" of this Petition and holding/declaring that the said impugned Show Cause Notice is bad in law as is issued ignoring the mandatory provisions of Section 28 of the Customs Act, 1962 and that it is barred by reasonable period of limitation;*
>
> ***E.** For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Show Cause Notice dated 20-04-2018 bearing C. No. VIII(10)11/SCN/BSIL/CUS(P)/BBSR/2018/8189A issued by the Respondent No.4 in respect of the Bill of Entry No.261/HC/2011- 12 Dated 20-03-2012, which is at Annexure-"5" of*

*this Petition and holding/declaring that the said impugned Show Cause Notice is bad in law as is issued ignoring the mandatory provisions of Section 28 of the Customs Act, 1962 and is barred by reasonable period of limitation.***"**

3. In writ application being W.P.(T) No. 4340 of 2022 the petitioner has made following prayers;

> ***"A.*** *For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Order-in-Appeal dated 01.08.2022 bearing No. 107- 110/CUS/CCP/2022 which is at Annexure-1 of this writ petition passed by the Respondent No.1, in exercise of powers conferred under Section 128 read with Section 128A of the Customs Act, 1962 and declaring that the finalization of provisional assessment in the instant case is barred by limitation and without jurisdiction;*
> ***B.*** *For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Final Assessment Order dated 26.06.2021 bearing No. C. No. VIII(06)95/CUS/DMR/2012/Pt./04/1087 passed by the Respondent No.4 finally assessing the Bill of Entry No.158/HC/2012-13 Dated 17.07.2012, which is at Annexure-"2" of this Petition and holding that the finalization of provisional assessment in the instant case is barred by limitation and without jurisdiction;*
> ***C.*** *For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Final Assessment Order dated 20/21.09.2021 bearing Order-in-Original No.AC/DMR/FA/IMP/02/2021 passed by the Respondent No.4 finally assessing the Bill of Entry No.341/HC/2012-13 Dated 26.11.2012, which is at Annexure-"3" of this Petition and holding that the finalization of provisional assessment in the instant case is barred by limitation and without jurisdiction;*
> ***D.*** *For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Final Assessment Order dated 03-04-2018 bearing No. C. No. VIII(6)40/CUS/DMR/2012/447 issued by the Respondent No.3 finally assessing the Bill of Entry No.260/HC/2011-12 Dated 20.03.2012, which is at Annexure-"4" of this Petition and holding that the finalization of provisional assessment in the instant case is barred by limitation and without jurisdiction;*
> ***E.*** *For issuance of writ(s), order(s) and/or direction(s), quashing and setting aside the impugned Final Assessment Order dated 03.04.2018 bearing No. C. No. VIII(6)40/CUS/DMR/2012/448 issued by the Respondent No.3 finally assessing the Bill of Entry No.261/HC/2011-12 Dated 20.03.2012, which is at Annexure-"5" of this Petition and holding that the finalization of provisional assessment in the instant case is barred by limitation and without jurisdiction***"**

4. The brief fact of the case is that the Petitioner is a Company having its registered office and factories in the State of Jharkhand. The Petitioner imported Steam Coal within the meaning of Section 2(23) of the Customs Act, 1962 from outside the territory of India for use in its factory in the State of Jharkhand. The Petitioner is the importer of the Steam Coal within the meaning of Section 2(26) of the Act.

5. **In W.P.(T) No. 5161 of 2022**, the Petitioner is challenging the legality and validity of the common Order-in-Appeal dated 10-08-2022. (Annexure "1") passed by the Commissioner (Appeal), GST, Central Excise & Customs, Bhubaneswar, the Respondent No.3 by which he set aside the impugned Order-in-Original dated 19-11-2018 (Annexure-"2") and the impugned Order-in-Original dated 19-11- 2018 (Annexure-"3") and remanded the matter back for *denovo* adjudication ignoring that the impugned Orders dated 19-11-2018 are barred by limitation of Six months under Section 28 (9) (a) of the Customs Act, 1962 and also entire proceedings is carried out without Pre-Show Cause Notice consultation provided under Section 28 (1) (a) of the Act which provisions are mandatory and imperative in character and goes to the root of the matter.

The Petitioner in this writ petition is further challenging the legality and validity of impugned Order-in-Original dated 19-11-2018 (Annexure-"2") & Order-in-Original dated 19-11-2018 (Annexure - 3") passed by the Respondent No.4 under Section 28(8) of the Customs Act, 1962 demanding differential Basic Custom duty of Rs.24,69,401/- @ 5% along with interest under Section 28AA of the Act and imposition of penalty of Rs.24,69,401/- under Section 112(a) and also imposition of Redemption Fine of Rs.23,27,648/- in lieu of confiscation under

Section 125. The demand in the said order is confirmed under Section 28(1) of the Customs Act, 1962.

The Petitioner in the instant writ petition has further challenged the legality of impugned Show Cause Notice dated 20-04-2018 (Annexure"4") & Show Cause Notice dated 20-04-2018 (Annexure-"5") issued by the Respondent No.4 under Section 28 of the Customs Act, 1962 in respect of the Bill of Entry No.260/HC/2011-12 Dated 20-03-2012 & Bill of Entry No.261/HC/2011-12 Dated 20-03-2012 proposing in each case differential Basic Customs duty of Rs.24,69,401/-@ 5% along with interest under Section 28AA and penalty under Section 112(a) and also confiscation of 3650 MT of Steam Coal of the value of Rs.2,32,76,477/- under Section 111(d), Section 111(m) and Section 112(a) of the said Act. Both the Show Cause Notices are issued under Section 28(1) as no case of collusion, wilful mis-statement or suppression of facts is alleged and no penalty for such offences under Section 114A of the Customs Act, 1962 is proposed.

6. Mr. Kartik Kurmi assisted by Mr. N. K. Pasari and Ms.Sidhi Jalan, learned counsels for the petitioner submits that the Show Cause Notice is issued under Section 28(1) as no case of collusion, wilful mis-statement or suppression of facts is alleged and no penalty for such offences under Section 114A of the Customs Act, 1962 is proposed or imposed.

In the year 2012, the Petitioner entered into High Seal Sale vide Agreement dated 02-03-2012 with M/s QVC Exports Private

Ltd., (Bill of Entry No.260/HC/2011-12] and Agreement dated 02-03-2012 with M/s QVC Exports Private Ltd., (Bill of Entry No.261/HC/2011-12] for import of Steam Coal of South African Origin for use in its factory in the State of Jharkhand for manufacture of Sponge Iron and generation of electricity for use in the production of finished goods. The said Steam Coal was imported by the Petitioner as an importer within the meaning of Section 2(26) of the Customs Act, 1962 through Dhamra Port in the State of Odisha against said 2 nos. of Bill of Entries.

Upon filing of aforesaid Bill of Entries, the Superintendent Customs, Dhamra Port, in the State of Odisha provisionally assessed the said Bill of Entries under Section 18(1) of the Customs Act, 1962.

In respect of the Bill of Entry No.260/HC/2011-12 Dated 20-03-2012 and Bill of Entry No.261/HC/2011-12 dated 20-03-2012, the Finalization of Provisional Assessment was done after lapse of more than 6 years vide Final Assessment Order dated 03-04-2018 (Annexure-"10") and Final Assessment Order dated 03-04-2018 (Annexure-"11") respectively passed by the Assistant Commissioner, Customs Division, Dhamra.

7. Learned counsel further submits that being aggrieved with finalization of provisional assessment against the aforesaid 2 nos. of Bill of Entries, the Petitioner carried the matter into appeal before Commissioner (Appeal), Bhubaneswar Zone. Pending said two appeals, the Respondent No.4, in respect of Bill of Entry No.260/HC/2011-12 Dated 20-03-2012 after finalization of provisional assessment on dated 03-04-2018 issued the impugned Show Cause Notice dated 20-04-2018 (Annexure-"4") demanding differential Basic Customs duty of Rs.24,69,401/- under Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Act on the ground that the imported 'Coal' is not "Steam Coal" falling under SH 27011920 but "Bituminous Coal" falling under SH 27011200 and the rate of applicable BCD is @ 5% *ad-valorem* under Sl. No. 124 of Customs Tariff Notification No. 12/2012-Cus dated 17-03-2012 and not NIL as claimed by the Petitioner under Sl. No. 123 of the said Notification.

He further submits that similarly in respect of Bill of Entry No.261/HC/2011-12 Dated 20-03-2012, during pendency appeal before Commissioner(Appeal) against finalization of provisional assessment on dated 03-04-2018, the Revenue issued the impugned Show Cause Notice dated 20-04-2018 (Annexure"5") demanding differential Basic Customs duty demand of Rs.24,69,401/- under Section 28 of the Customs Act, 1962 along with interest under Section 28AA on the ground that the imported Coal is not "Steam Coal" falling under SH 27011920 but "Bituminous Coal" falling under SH 27011200 and the rate of applicable BCD is 5% *ad-valorem* under Sl. No.124 of Customs Tariff Notification No. 12/2012-Cus dated 17-03-2012 and not NIL as claimed by the Petitioner under Sl. No. 123 of the said Notification.

8. Learned counsel specifically asserted that the Show Cause Notices are issued under Section 28(1) as no case of collusion, wilful mis-statement or suppression of facts is alleged and no penalty for such offences under Section 114A of the Customs Act, 1962 is proposed. The Respondent No.3 vide one earlier Order-in-Appeal dated 01-08-2022 bearing No. 107-110/CUS/CCP/2022 disposed of the said two appeals against Final Assessment of Bill of Entry No.260/DC/2011-12 and Bill of Entry No.261/HC/2011-12 including finalization of two other Bill of Entries, by a common Order-in-Appeal dated 01-08-2022, set aside the Final Assessment Orders dated 03-04-2018 (Annexure-10" & Annexure-11] against which the said appeals were filed before him and remanded the matter back to the lower authority with a direction to issue a speaking order after providing reasonable opportunity of hearing before finalization of the Bill of Entries as per the Section 18(1A) of the Customs Act, 1962 and Regulation 5 and 6 of the Customs (Finalization of Provisional Assessment) Regulation, 2018.

9. Mr. Kurmi contended that the said Order-in-Appeal dated 01-08-2022 is a subject matter of challenge in W. P. (T) No.4340 of 2022. He further contended that Sub-Section [9] of Section 28 provides for determination of duty and interest within the period of six months from the date of notice, in respect of case falling under Clause (a) of sub-Section (1) of Section 28 i.e. where no collusion, wilful mis-statement or suppression of facts are involved and within a period of one year as per Clause (b) of Section 28(9) in respect of cases falling under Section 28(4) i.e.

where no collusion, wilful mis-statement or suppression of facts are involved.

He strenuously contended further that the words *"where it is possible to do so"* under Clause (a) and Clause (b) of Sub-Section (9) of Section 28 of the Customs Act, 1962 is omitted by Section 63 of the Finance Act, 2018 (w.e.f. 29-03-2018). Now Section 28(9) of the Customs Act, 1962 is mandatory and imperative in character.

He further submits that the second proviso to Section 28(9) provides that where the Proper Officer fails to determine the amount of duty, interest within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued and in the instant case no case is made out which might have prevented the Proper Officer from determining the amount of duty, interest within the period of six months specified under Clause (a) of Section 28(9) nor there is any extension of time limit by any senior Officer in accordance with first proviso to section 28(9). Even no case under Section 28(9A) is made out by the proper officer that the proper officer is unable to determine amount of duty or interest under Section 28(8) for reason of an appeal in a similar matter is pending before Tribunal, High Court or Supreme Court or an interim order of stay or the Board has in a similar matter issued direction or order to keep such matters pending or Settlement Commission has admitted application of the concerned person.

10. Learned counsel further submits that no information for not determining the duty or interest is even communicated to the Petitioner as mandated U/s 28(9A). It is further submitted by Ld. Counsel that the proviso to Clause (a) of sub-Section (1) of Section 28 provides for mandatory pre-show cause notice consultation. The Respondent No.2 in exercise of powers under Section 157(2) read with Section 28(1)(a) of the Customs Act, 1962 has framed Pre-Notice Consultation Regulations, 2018 w.e.f. 02-04-2018 vide Notification No.29/2018-Cus. (NT) dated 02-04-2018.

It is submitted that under proviso to Section 28(1)(a) of the Customs Act, 1962 provides that before issuing the show cause notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as prescribed under the Pre-Notice Consultation Regulations, 2018. The Respondent No. 4 vide impugned Order-in-Originals both dated 19- 11-2018 (Annexure-2 & Annexure-3") against two Show Cause Notices both dated 20-04-2018, (Annexure"4" and Annexure "5") after lapse of 7 months i.e. beyond limitation of six months as provided under section 28(9)(a) of the Act in respect of Bill of Entry No.260/HC/2011-12 dated 20-03-2012 and Bill of Entry No. 260/HC/2011/12 dated 20-03-2012 arbitrarily determined the differential Basic Customs duty along with interest and also imposed equal penalty under Section 112(a) of the Act.

The demand is confirmed under Section 28(1) of the Act. He reiterated that in the impugned Order, no case of collusion, wilful mis-statement or suppression of facts under Section 28(4) is made out and no penalty for such offences is imposed under Section 114A of the Customs Act, 1962.

11. He further contended that the Respondent No.3 passed the impugned common Order-in-Appeal dated 10-08-2022 bearing No.113-114/CUS/CCP/2022 (Annexure"1") and set aside Order-in-Originals, both dated 20-04-2018 (Annexure "2" & Annexure-"3"), and remanded the matter back for *denovo* adjudication ignoring that the adjudication orders are barred by limitation under section 28(1)(a) of the Act and the Show Cause Notices are issued without Pre-Show Cause Notice consultation as provided under Section 28(9)(a) of the Act which goes to the root of the matter; hence the entire proceeding is void *ab initio* nullity and vitiated.

Further, issuance of the impugned Show Cause Notices dated 20-04- 2018 i.e. after lapse of more than 6 years from the date of provisional assessment on 20-03-2012 is barred by reasonable period of limitation. The said finalization of provisional assessment is subject matter of challenge in W.P. (T) No. 4340 of 2022.

He further submits that as per Para 3.1 of Chapter 7 of the Customs Manual Instruction issued by the Respondent No.2 in exercise of power under Section 151A of the Customs Act, 1962 which is binding upon the department, the provisional assessment should be finalized within a period of six months whereas in the instant case provisional assessment is finalized and the impugned Show Cause Notices are issued after lapse of more than six months, hence, it is barred by limitation.

It is submitted that when the initial action of finalization of provisional assessment is not tenable in law the subsequent proceedings by way of impugned Show Cause Notice, Order-in-Original and Order-in-Appeal has to fall.

12. So far as **W.P.(T) No. 4340 of 2022** is concerned; the Petitioner has challenged the legality and validity of the common Order-in- Appeal dated 01.08.2022 (Annexure-1) passed by the Commissioner (Appeal), GST, Central Excise & Customs, Bhubaneswar against the Final Assessment Orders dated 26-.06.2021 (Annexure-2), dated 20/21.09.2021 (Annexure-3), dated 03.04.2018 (Annexure-4) and dated 03.04.2018 (Annexure-5) to the extent he has remanded the matter back to the Respondent No.4 for fresh initiation of proceedings for finalization of provisional assessment under Section 18(2) of the Customs Act, 1962 even though the proceeding is barred by limitation.

The Petitioner by the instant writ petition is further challenging the legality and validity of impugned Final Assessment Order dated 26.06.2021 (Annexure-2), dated 20/21.09.2021) (Annexure-3), dated 03.04.2018 (Annexure-4) and dated 03.04.2018 (Annexure-5) finalizing 4 Bill of Entries No. 158/HC/2012-13 Dated 17.07.2012, No.341/HC/2012-13 Dated 26.11.2012, No.260/HC/2011-12 Dated 20.03.2012 and No.261/HC/2011-12 Dated 20.03.2012 respectively.

From records it is evident that the aforesaid 4 Bill of Entries were filed in the year 2012. The Superintendent Customs, Dhamra Port, in the State of Odisha provisionally assessed the said Bill of Entries under Section 18(1) of the Customs Act, 1962 on the date of presentation and provisionally permitted clearance of the imported Steam Coal for home consumption upon payment of NIL Basic Customs duty and upon payment Countervailing duty (CVD) @1% as tabulated above (including other Cess etc.).

13. Mr. Kurmi contended that upon provisional assessment of the aforesaid 4 Bill of Entries, the finalization of assessment was kept pending in suspended animation *sine die* for 6 years to 9 years by the Respondent No.4. The "CBIC Customs Manual of Instructions" under Chapter 7 which deals with Provisional Assessment, it is mandated by the CBIC Respondent No.2, under Para 3.1 that, the provisional assessment is expected to be finalized expeditiously well within 6 months. In respect of the two Bill of Entry No. 158/HC/2012-13 dated 17-07-2012 and Bill of Entry No.341/HC/2012-13 dated 26.11.2012 the Finalisation of Provisional Assessment was done after lapse of more than 9 years vide Final Assessment Order dated 26.06.2021 (Annexure "2") and Final Assessment Order dated 20/21.09.2021 (Annexure-"3").

14. In respect of the other two Bill of Entry No.260/HC/2011-12 Dated 20.03.2012 and Bill of Entry No.261/HC/2011-12 dated 20.03.2012, the Finalization of Provisional Assessment was done after lapse of more than 6 years vide Final Assessment Order dated 03.04.2018 (Annexure-4) and Final Assessment Order dated 03.04.2018 (Annexure-5) respectively.

Learned counsel for the Petitioner submits that being aggrieved with delayed finalization of provisional assessment against the aforesaid 4 nos. of Bill of Entries by the Respondent No.4, the Petitioner carried the matter into appeal vide Memo of Appeals under Section 128 read with Section 128A of the Customs Act, 1962 before Commissioner (Appeal). Bhubaneswar Zone.

The Respondent No.1 vide Order-in-Appeal dated 01.08.2022 bearing No. 107- 110/CUS/CCP/2022 held that finalization of provisional assessment after 6-9 years is barred by limitation while at the same time remanded the matter back to the lower authority with a direction to issue a speaking order after providing reasonable opportunity of hearing to the Petitioner.

15. Learned counsel contended that the finalization of provisional assessment is barred by limitation of 6 months as per Para 3.1 under Chapter 7 of the *"CBIC Customs Manual of Instruction"* and is in violation of natural justice, hence, is without jurisdiction and a nullity in the eyes of law. The "CBIC Customs Manual of Instruction which is a compilation of instruction issued by Respondent No.2 in exercise of power under Section 151A of the Customs Act, 1962 and is binding on the officers working under the Customs Act, 1962.

Further in respect of Bill of Entry No.158/HC/2012-13 Dated 17.07.2012 and Bill of Entry No.341/HC/2012-13 Dated 26.11.2012, no show cause notice and/or adjudication order under Section 28 of the Customs Act, 1962 have been issued as yet even after lapse of 10 years (one decade), hence, the demand of duty of Rs 75,76,956/- and Rs.62,83,824/- aggregating to Rs. 1,38,60,780/- is also not sustainable being hopelessly barred by limitation, and therefore, the Respondent No.3 committed a serious error by remitting the said matter to the Respondent No.4 for initiation of a fresh proceeding which is arbitrary, unreasonable and oppressive.

16. Learned counsel for the Revenue submits that M/s. Bihar Foundry & Castings Limited., (Unit: Gautam Ferro Alloys) Main Road, Ranchi-834001. Jharkhand, (hereinafter referred to as the 'Petitioner') is an importer and imported Coal through the port of Dhamra. The Petitioner had imported and cleared South African Coal in bulk and classified the same under CTH 27011920 declaring as "Steam Coal (Non-Coking)" and paid only 1% Additional duty (CVD) leviable under Sub-Section (1) of Section 3 of the Customs Tariff Act, 1975, claiming exemption under Notification No. 12/2012-Cus dated 17.03.2012. The Bills of Entry were assessed provisionally against PD Bond executed by the Noticee. The goods under subject Bills of entry were classified under Tariff item No.27011920 of the Customs Act, 1975.

He further submits that Chapter 27 of the Customs Tariff Act, 1975 stipulates that for the purpose of sub-heading 27011200 "Bituminous Coal" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to greater than 5833 Kcal/Kg. As per the load port test/analysis report submitted at the time of the Bill of Entry it was found that the coal declared in B/E have a volatile matter limit exceeds to 14% and calorific value is greater than 5833 Kcal/Kg.

Learned counsel further contended that the coal imported under the above B/Es is to be classified as "Bituminous Coal" (Tariff classification - 27011200 instead of "Steam Coal" (Tariff classification - 27011920) as declared and thus duty would be as per Notification No. 12/2012-CUS dated 17.03.2012 (SI.No.124) attracting Basis Customs Duty (BCD) @ 5% and Additional Duty of Customs (CVD) @ 6% under Sub-Section (1) of Section 3 of the Customs Tariff Act, 1975.

He lastly submits that the Adjudication Orders (O-I-O), both dated 19.11.2018, against the Show Cause Notices, both dated 20.04.2018, have been set aside vide Order-in-Appeal No. 113- 114/CUS/CCP/2022 dated 10.08.2022. Hence the instant Writ Applications are not required and by filing the Writ Petitions, the Petitioner has tried to consume the valuable time of this Hon'ble Court.

17. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein it transpires that the Bill of Entries No. **260/HC/2011-12 & No.261/HC/2011-12** are common to both the Writ Petitions but its provisional assessment is under Challenge in W.P(T) No.4340 of 2022.

In **W.P.(T). No.4340 of 2022**, the delayed finalization of Provisional Assessment of 4 nos. of Bill of Entries including the above two Bill of Entries are under challenge along with 1st Appellate Order against such provisional Assessment of those four nos. of Bill of Entries.

In **W.P.(T). No.5161 of 2022**, the two Show Cause Notices (issued under Section 28 of the Customs Act, 1962, issued after finalization of Provisional Assessment) & Order-in-Original issued against two Bill of Entries No.260/HC/2011-12 & No.261/HC/2011-12 and 1st Appellate Order against Order-in-Original are the subject matter of challenge.

18. Against, the other two Bill of Entries No.158/HC/2012-13 & No.341/HC/2012-13 which are among the four nos. of Bill of Entries under challenge in 1st W.P.(T) No.4340 of 2022, no show cause notice has yet been issued even after lapse of 10 years from the date of provisional assessment.

From record it is further evident that there is delayed finalization of the provisional Bill of Entries No.158 / HC / 2012-13, Bill No. 341/ HC/2012-13, Bill No. 260/ HC/ 2011-12 & Bill No.261/HC/2011-12; however, the same is contrary to Para 3.1 of "Chapter 7 Provisional Assessment" of CBIC Manual of Instructions which is issued by the CBIC in exercise of powers under Section 151A of the Customs Act, 1962 and which is binding on the Respondent. For brevity, the same is quoted herein below: –

> ***3. Finalisation of provisional assessment :***
> *3.1 The provisional assessments are expected*

> *to be finalized expeditiously, well within 6 months. However, in respect of cases involving machinery contracts or large project imports, where imports take place over long period, such finalisation may take more time since action to can be taken only after all the imports have been made. Here too, effort should be made to finalise the cases within 6 months of the date of import of the last consignment covered by the contract.*
>
> *[Refer Instructions F. No. 512/5/72-Cus.VI, dated 23-4-1973; and F. No. 511/7/77-Cus.VI, dated 9-1-1978 and Circular No.17/2011-Cus., dated 8-4-2011]*

19. At this stage, it is necessary to refer the case of ***Commissioner of Customs Vs. Indian Oil Corporation*** reported in ***2004 (165) ELT 257 (SC)***, wherein it has been held by the Hon'ble Apex Court that the Revenue cannot raise a contention contrary to binding circular by the Board when circular remains in operation, Revenue is bound by it (Para – 12).

As per Para 3.1 of the said CBIC instruction, the Bill of Entries are to be finalized expeditiously well within 6 months. In the instant case, the finalization of provisional assessment is governed by Para 3.1 of the CBIC Instruction which is the reasonable period as under Section 18 of the Customs Act, 1962.

It is true that under Section 18 of the Customs Act, no period of limitation is prescribed, however, finalization should be done within reasonable period of limitation. Reference may be made to the case of ***K.B. Nagur, M.D. (Ayurvedic) Vs. UOI*** reported in ***(2012) 4 SCC 483 (Para 38)]***.

20. In the impugned 1st Appellate Order dated 01-08-2022 the Commissioner (Appeal) which is also under challenge, Respondent No.3 has held that the finalization of assessment is barred by limitation under Rule 5 of Customs (Finalisation of Provisional Assessment) Regulation, 2018 but remanded the matter for fresh adjudication giving a fresh lease of life to a stale and time barred claim, which is not sustainable in the eye of law. Thus, it is clear that the case of the Petitioner is barred by limitation of 6 months as per Para 3 of Chapter 7 of CBIC Manual and not as per Rule 5 of 2018 Regulation.

The Commissioner (Appeal) in the impugned 1st Appellate Order dated 01-08-2022 has held that the finalization of provisional assessment is barred by limitation. Para 3.1 of the CBIC Instruction; the limitation under Rule 5 of 2018 Regulation is applicable prospectively w.e.f. 14-08-2018, is not applicable to present case as the Bills of Entries are assessed provisionally in 2011-12 and 2012-13 i.e. much before 14-08-2018.

21. It is not out of place here to mention that Rule 5 of Customs (Finalization of Provisional Assessment) Regulation, 2018 (the 2018 Regulation) applies only to provisional assessment made after 14-08-2018; hence, in the case at hand it cannot be applied on the provisional assessments of the 4 Bill of Entries as they are made in the year 2012. The limitation for finalization to the case at hand would be governed by Para 3.1 of the CBIC Instruction as per which the finalization of provisional assessment is to be made expeditiously, well within 6 months whereas in the instant case the finalization is done after 6 years to 9 years.

The Punjab & Haryana High Court in the case of ***Golden Enterprises Vs. CC*** reported in ***2022 (379) E.L.T 334 (P&H)***

under the Customs Act, 1962 while dealing with similar circumstances following its earlier judgment in the case of ***Gupta Smelters Pvt. Ltd Vs UOI*** reported in ***2019 (365) ELT 77, M/s GPI Textiles Vs. UOI*** reported in ***2018 (362) ELT 388 (P&H)*** and judgment of the Gujarat High Court in the case of ***M/s Siddhi Vinayak Syntex Pvt. Ltd Vs. UOI*** reported in ***2017 (352) ELT 455 (Guj)*** wherein the finalization of provisional assessment after 8-9 years from the date of Bill of Entry was quashed considering that there was no petition by the Petitioner pending before Competent Court nor was any stay of any court, thus, there was no reason to withhold framing of final assessment.

22. Further, in the case of ***Tata Teleservices Ltd Vs. State of Chhattisgarh*** reported in ***2022(381) E.L.T 145(S.C)*** the Hon'ble Apex Court has held that point of limitation is point of jurisdiction and it goes to the root of the matter. In the instant case; out of the 4 nos. of Bill of Entries, the Bill of Entry No.158/HC/2012-13 was provisionally assessed on 17-07-2012 under Section 18 of the Customs Act, 1962 which was finally assessed after 9 years on 26-06-2021 (Annexure – 2).

Further, after finalization no show cause notice under Section 28 of the Customs Act, 1962 is issued yet even after expiry of more than 10 years from the date of provisional assessment. Similarly, Bill of Entry No.341/HC/2012-13 was provisionally assessed on 26-11-2012 and was finally assessed on 20/21-09-2021 i.e. after 9 years (Annexure 3). Here also, after finalization no show cause notice under Section 28 of the

Customs Act, 1962 is issued yet even after expiry of more than 10 years from the date of provisional assessment. In respect of Bill of Entry No.158/HC/2012-13 and Bill of Entry No.341/HC/2012-13 no show cause notice under Section 28 of the Act is yet issued even after lapse of more than 10 years. The Bill of Entry No. 260/HC/2011-12 was provisionally assessed on 20-03-2012 and was finally assessed on 03-04-2018 i.e. after 6 years (Annexure-4) which is subject matter of W.P.(T) No.4340 of 2022. After finalization, the show cause notice under Section 28 of the Act was issued on 20-04-2018 (Annexure – 21) and the adjudication Order was passed on 19-11-2018 (Annexure – 23). The said Show Cause Notices and adjudication Orders are subject matter of W.P.(T) No.5161 of 2022.

The Bill of Entry No.261/HC/2011-12 was provisionally assessed on 20-03-2012 and was finally assessed on 03-04-2018 i.e. after 6 years (Annexure – 5) which is subject matter of W.P.(T) No.4340 of 2022. After finalization, the Show Cause Notice under Section 28 of the Customs Act was issued on 20-04-2018(Annexure-22) and the adjudication Order was passed on 19-11-2018(Annexure–24). The said Show Cause Notices and adjudication Orders are subject matter of W.P.(T) No.5161 of 2022.

23. So far as W.P.(T) No. 5161 of 2022 is concerned; in this writ petition 1st Appellate Order dated 10-08-2022 is challenged along with legality and validity of two SCNs dated 20-04-2018 and legality and validity of two Order-in-Original both dated 22-11-

2018, both against two Bill Entries i.e. (Bill of Entry No.260/HC/2011-12 and Bill of Entry No.261/HC/2011-12 respectively). As discussed herein above; both the impugned Order-in-Originals dated 19-11-2018 are barred by limitation of 6 months under Section 28(9)(a) of the Customs Act, 1962 which Respondent No.3 failed to appreciate while passing impugned 1st Appellate Order dated 10-08-2022. Due to delayed passing of the Order-in-Originals, entire proceeding right from impugned SCNs dated 20-04-2018 deserves to be quashed and set aside.

24. Having regards to the aforesaid discussions we hold that the 1st Appellate Order dated 10-08-2022 which is challenged along with validity of aforesaid two show cause notices both dated 20-04-2018 and two adjudication Orders, both dated 19-11-2018, under Section 28 [against Bill of Entry No.260/HC/2011-12 and Bill of Entry No.261/HC/2011-12 respectively] is not sustainable in the eye of law and legal proposition settled by the Hon'ble Apex Court and various High Courts on the ground that both the adjudication orders dated 19-11-2018 are passed after expiry of mandatory period limitation of 6 months as provided under Section 28(9)(a) of the Customs Act, 1962; further, the impugned two SCNs dated 20-04-2018 are issued without Pre-SCN consultation as mandated under proviso to Section 28(10)(a) of the Customs Act, 1962.

25. As stated herein above; the words *"where it is possible to do so"* under clause (a) and (b) of Section 28(9) is omitted by Section 63(iii)(a) of Act 13 of 2018 w.e.f. 29-03-2018. After deletion of the said words, the period of limitation under Section 28(9)(a)/(b) are mandatory and imperative in character. Section 28(9)(a) envisages that the proper officer "shall" determine the amount of duty or interest under Section 28(8) within a period of 6 months from the date of SCN in respect of cases falling under Section 28(1) i.e. where there is no collusion or wilful mis-statement or suppression of fact is involved and within a period of 1 years in respect of cases falling under Section 28(4) i.e. where collusion, wilful mis-statement or suppression of facts are involved.

26. In view of the above facts we are having no hesitation in holding that the impugned Order-in-Originals both dated 19-11-2018 should have been passed within limitation period of 6 months in accordance with Section 28(9)(a) which is mandatory in character particularly after omission of the words *"where it is possible to do so".*

At the cost of repetition, the word; *"where it is possible to do so"* which exists under Section 11A(11) of the Central Excise Act, 1944, is omitted under Section 28(8) of the Customs Act, 1962 w.e.f. 29-03-2018 whereas the impugned Order-in-Originals were passed on dated 19-11-2018, hence, provisions of Section 28(9) had become mandatory w.e.f. 29-03-2018 which the Respondent No.3 failed to appreciate while passing the 1st Appellate Order dated 10-08-2022 as in the instant case no extension of time was ever granted for passing the Order-in-Originals by the competent authorities, facts of which are not disputed by the Respondent in their Counter Affidavits. Further, in the instant case, no case of collusion or wilful mis-statement or suppression of fact is made out. Section 114A of the Customs Act provides for imposition of penalty in case of collusion, wilful mis-statement or suppression of facts.

27. Though, penalties are imposed in the Order-in-Originals under Section 111(d) & (m) and Section 112(a) which does require ingredients of collusion, wilful mis-statement or suppression of facts. In the instant case for absence of collusion, wilful mis-statement or suppression of fact, no penalty under Section 114A have been imposed, hence, extended period of one year is not attracted in the instant case.

Further, the mandatory *Pre-SCN* consultation as mandated under proviso to Section 28(1)(a) of the Customs Act, 1962 read with Pre-Notice Consultation Regulation, 2018 are not complied with while issuing the impugned SCNs both dated 20-04-2018, hence, the subsequent Order-in-Original both dated 19-11-2018 and the impugned 1st Appellate Order dated 10-08-2022 are bad in law being void *ab initio* and a nullity in the eyes of law.

In the Counter Affidavit, the Respondents have not disputed that no Pre-Notice consultation was extended. The Respondent accepts that while issuing the impugned SCN, the Pre-SCN consultation was not done. In the case of ***Victory Electric Vehicles International Pvt. Ltd Vs. UOI 2022 (382) ELT 597(Del)*** the Hon'ble Delhi High Court while dealing with exactly similar situation under proviso to Section 28(1)(a) of the

Customs Act, 1962 held that the provisions of Pre-notice consultation is mandatory in character and held that the Revenue must scrupulously adhere to the same and due to non-compliance thereof the adjudication order is liable to be quashed (Refer Para 14.2, Para 18, Para 21 and Para 21.1).

Further, in the case of ***Competent Authority Vs. Barangore Jute Factory*** reported in ***(2005) 13 SCC 477,*** it has been held by the Hon'ble Apex Court that where statute requires an act to be done in a particular manner, the act has to be done in that manner along (Para 5).

Similar views have been expressed in the case of ***A.K. Roy Vs. State of Punjab*** reported in ***(1986) 4 SCC 326*** and ***CIT Vs. Anjum M.H. Ghaswala*** reported in ***(2002) 1 SCC 633.***

28. In view of the aforesaid discussions and the judicial pronouncements in the background of the facts of this case, both these writ applications are allowed and pending I.A., if any, is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Amardeep/
AFR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.06.2026

Pronounced on :06.07.2026

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MRS. JUSTICE N.MALA

W.A.Nos.2282 of 2025, 1969 of 2022,1970 of 2022, 2054 of 2022, 2057 of 2022, 2058 of 2022, 2060 of 2022, 2061 of 2022,2066 of 2022, 2078 of 2022, 2146 of 2022, 2778 of 2022, 2779 of 2022 and 1201 of 2025
&
C.M.P.Nos.14378 of 2022, 154 of 2023, 14389 of 2022, 15496 of 2022, 15560 of 2022 and 15869 of 2022, 15561, 15568 of 2022, 15581 of 2022, 190 of 2023, 15644 of 2022, 15692 of 2022, 16009 and 22573 of 2022

W.A.No.2282 of 2025:
M/s Eskay Design,
Represented by its Partner,
Shri.K.Shivashankar
Kailash No.25, Cenotaph Road 1st Street,
Teynampet, Chennai 600 018. ..Appellant/Petitioner

/versus/

1.Union of India
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2.The Joint Director,
Directorate General of GST Intelligence,
Chennai Zonal Unit,
V and VIII Floors, Tower II,
BSNL Building, No.16, Greams Road,
Chennai 600 006.

3.The Additional Commissioner of Central Tax
and Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ..Respondent/Respondent

Prayer:

Writ Appeal has been filed under Clause 15 of Letter Patent to allow the writ appeal by setting aside the impugned order dated 02.09.2024 in W.P.No.8412 of 2022 passed by the Hon'ble High Court.

For Appellant :Mr.Hari Radhakrishnan

For Respondents :No appearance for R1 and R3
M/s S.Vaitheeswari for R2

W.A.No.1969 of 2022:

M/s IL & FS Tamil Nadu Power Corporation Ltd.,
Represented by its authorized signatory,
4th Floor, KPR Tower,
No.2, 1st Street,
Subba Rao Avenue, College Road,
Chennai 600 006. ..Appellant

/versus/

1.Additional Director General,
Directorate of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
Coimbatore 641 001.

2.Additional Director General (Adjudication),
Directorate of GST Intelligence,
Mumbai Zonal Unit,
1st and 3rd Floor, NTC House,
15 NM Road, Ballard Estate,
Mumbai 400 001.

3.Central Board of Excise and Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

5.The Principal Commissioner of GST & Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034. ..Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.14039 of 2021 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran

For Respondents :Mr.M.Santhanaraman, Sr.St.C for R1
Service not completed for R2 to R4
No appearance for R5

W.A.No.1970 of 2022:
M/s IL & FS Tamil Nadu Power Corporation Ltd.,
Represented by its authorized signatory,
4th Floor, KPR Tower,
No.2, 1st Street,
Subba Rao Avenue, College Road,
Chennai 600 006. ..Appellant/Appellant

/versus/

1.Additional Director General,
Directorate of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
Coimbatore 641 001.

2.Additional Director General (Adjudication),
Directorate of GST Intelligence,
Mumbai Zonal Unit,
1st and 3rd Floor, NTC House,
15 NM Road, Ballard Estate,
Mumbai 400 001.

3.Central Board of Excise and Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

5.The Principal Commissioner of GST & Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.14036 of 2021 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran
For Respondents :Mr.M.Santhanaraman, Sr.St.C. for R1

W.A.No.2054 of 2022

M/s NLC Tamil Nadu Power Limited,
Represented by its Chief Executive Officer,
Mr.K.Kondas Kumar,
Tuticorin Harbour Estate,
Tuticorin 628 004. ..Appellant/Petitioner

/versus/

1.Additional Director General,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
Coimbatore 641 001.

2.Additional Director General (Adjudication),
Directorate General of GST Intelligence,
Mumbai Zonal Unit,
1st and 3rd Floor, NTC House,
15 NM Road, Ballard Estate,
Mumbai 400 001.

3.Central Board of Indirect Taxes and Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

5.The Commissioner of GST & Central Excise,
Madurai Commissionerate,
No.4, Lal Bahadur Sashtri Road,
Revenue Buildigs, BB Kulam,
Madurai 625 002. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.17498 of 2021 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran

For Respondents :No appearance

W.A.No.2057 of 2022:

M/s NLC India Limited,
Formerly Neyveli Lignite Corporation Limited,
Represented by its Company Secretary,
Mr.K.Viswanath,
Block-1, Corporate Office,
Neyveli, Tamil Nadu 607 801. ..Appellant/Petitioner

/versus/

1.Additional Director General,
Directorate of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
Coimbatore 641 001.

2.Additional Director General (Adjudication),
Directorate of GST Intelligence,
Mumbai Zonal Unit,
1st and 3rd Floor, NTC House,
15 NM Road, Ballard Estate,
Mumbai 400 001.

3.Central Board of Indirect Taxes and Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

5.The Commissioner of GST & Central Excise,
Trichy Commissionerate,
No.1,Willams Road, Melapudur,
Cantonment, Tiruchirappalli 620 001. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.17385 of 2021 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran
For Respondents :Mr.K.Umesh Rao
Senior Standing Counsel for R2 to R5
M/s M.Santhanaraman,Sr.St.C. for R1

W.A.No.2058 of 2022:

M/s NLC India Limited,
Formerly Neyveli Lignite Corporation Limited,
Represented by its Company Secretary,
Mr.K.Viswanath,
Block-1, Corporate Office,
Neyveli, Tamil Nadu 607 801. ..Appellant/Petitioner

/versus/

1.Principal Additional Director General,
Directorate of GST Intelligence,
Chennai Zonal Unit,
No.16, BSNL Building, Tower-II,
5th and 8th Floor, Greams Road,
Chennai 600 006.
2.Central Board of Indirect Taxes and Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

3.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.1570 of 2022 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran
For Respondents :M/s M.Santhanaraman, Sr.St.C for R1 to R4

W.A.No.2060 of 2022:

M/s NLC India Limited,
Formerly Neyveli Lignite Corporation Limited,
Represented by its Company Secretary,
Mr.K.Viswanath,
Block-1, Corporate Office,
Neyveli, Tamil Nadu 607 801. ..Appellant/Petitioner

/versus/

1.Additional Director General,
Directorate of GST Intelligence,
Coimbatore Zonal Unit,
155-I, Lakshmanan Street, Ukkadam,
Coimbatore 641 001.

2.Additional Director General (Adjudication),
Directorate of GST Intelligence,
Mumbai Zonal Unit,
1st & 3rd Floor, NTC House,
15NM Road, Ballard Estate,
Mumbai 400 001.

3.Central Board of Indirect Taxes and Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

5.The Commissioner of GST & Central Excise,
Trichy Commissionerate,
No.1, Williams Road, Melapudur,
Cantonment, Tiruchirappalli 620 001. ..Respondents/Respondents

Prayer:
Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.17383 of 2021 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran

For Respondents :M/s M.Santhanaraman, Sr.St.C for R1
M/s K.Umesh Rao, Sr.St.C. for R2 to R5

<u>W.A.No.2061 of 2022:</u>
M/s NLC India Limited,
Formerly Neyveli Lignite Corporation Limited,
Represented by its Company Secretary,
Mr.K.Viswanath,
Block-1, Corporate Office,
Neyveli, Tamil Nadu 607 801. ..Appellant/Petitioner

/versus/

1.Principal Additional Director General,
Directorate of GST Intelligence,
Coimbatore Zonal Unit,
No.16, BSNL Building, Tower-II,
5th and 8th Floor, Greams Road,
Chennai 600 006.

2.Central Board of Indirect Taxes and Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

3.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.1571 of 2022 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran
For Respondents :M/s M.Santhanaraman, Sr.St.C for R1 to R4

W.A.No.2066 of 2022

M/s NLC Tamil Nadu Power Limited,
Represented by its Chief Executive Officer,
Mr.K.Kondas Kumar,
Tuticorin Harbour Estate,
Tuiticorin 628 004. ..Appellant/Petitioner

/versus/

1.Additional Director General,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
Coimbatore 641 001.

2.Additional Director General (Adjudication),
Directorate General of GST Intelligence,
Mumbai Zonal Unit,
1st and 3rd Floor, NTC House,
15 NM Road, Ballard Estate,
Mumbai 400 001.

3.Central Board of Indirect Taxes & Customs,
Through the Chairman,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

4.Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.

5.The Commissioner of GST & Central Excise,
Madurai Commissionerate,
No.4, Lal Bahadur Sashtri Road,
Revenue Buildings, BB Kulam,
Madurai 625 002. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.17496 of 2021 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran
For Respondents :No appearance

W.A.No.2078 of 2022

Qualitas Medical Group Private Limited,
Qualitas Screening & Family Clinic,
Represented by its Director,
No.G999, New No.4, 15th Street,
Anna Nagar West, Chennai 600 040. ..Appellant/Petitioner

/versus/

1.Joint Director,
Directorate of GST Intelligence,
Chennai Zonal Unit,
C-3, C-WING, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

2.Central Board of Indirect Taxes & Customs,
Through the Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110 001.

3.Union of India,
Through the Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi 110 001.

4.Joint Commissioner,
Office of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
692, M.H.U.Complex, Nandandam, Chennai 600 035.

5.Assistant Commissioner of Central Tax & Central Excise,
T.Nagar Division, 692, MHU Complex, Anna Salai,
Nandanam, Chennai 600 035. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.17938 of 2021 and thereby allow the above Writ Appeal.

For Appellant :Mr.Raghavan Ramabadran
For Respondents :No appearance

W.A.No.2146 of 2022:

Qualitas Medical Group Private Limited,
Qualitas Screening & Family Clinic,
Represented by its Director,
No.G999, New No.4, 15th Street,
Anna Nagar West, Chennai 600 040. ..Appellant/Petitioner

/versus/

1.Joint Director,
Directorate of GST Intelligence,
Chennai Zonal Unit,
C-3, C-WING, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

2.Central Board of Indirect Taxes & Customs,
Through the Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi 110 001.

3.Union of India,
Through the Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi 110 001.

4.Joint Commissioner,
Office of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
692, M.H.U. Complex, Nandanam,
Chennai 600 035.

5.Assistant Commissioner of Central Tax & Central Excise,
T.Nagar Division, 692, MHU Complex, Anna Salai,
Nandanam, Chennai 600 035. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order dated 17.06.2022 passed in W.P.No.17937 of 2021 and thereby allow the above Writ Appeal.

For Appellant :M/s Raghavan Ramabadran for
Mr.Raghav Rajeev
For Respondents :Mr.M.Santhanaraman

W.A.No.2778 of 2022:

M/s G.K.Shipping Services Pvt.Ltd.,
Represented by its Managing Director,
Shri Ramesh,
5-A/1, 10th Street,
Toovipuram,
Thoothukudi 628 003. ..Appellant/Petitioner

/versus/

1.Union of India,
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2.The Additional Director,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street,
Ukkadam, Coimbatore 641 001.

3.The Joint Commissioner,
O/o The Joint Commissioner of Central GST and Central Excise,
No.7, Tractor Road, N.G.O. "A" Colony,
Tirunelveli 627 007. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letter Patent to allow the writ appeal by setting aside the impugned order dated 17.06.2022 in W.P.No.24680 of 2021 passed by the Hon'ble High Court.

For Appellant :M/s Hari Radhakrishnan
For Respondents :M/s M.Santhanaraman, Sr.St.C for R1
No appearance for R2 to R5

W.A.No.2779 of 2022:

M/s G.K.Shipping Services Pvt.Ltd.,
Represented by its Managing Director,
Shri Ramesh,
5-A/1, 10th Street,
Toovipuram,
Thoothikudi 628 003. ..Appellant/Petitioner

/versus/

1.Union of India,
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2.The Additional Director,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
155-1, Lakshmanan Street,
Ukkadam, Coimbatore 641 001.

3.The Joint Commissioner,
O/o The Joint Commissioner of Central GST and Central Excise,
No.7, Tractor Road, N.G.O. "A" Colony,
Tirunelveli 627 007. ..Respondents/Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letter Patent to allow the writ appeal by setting aside the impugned order dated 17.06.2022 in W.P.No.24677 of 2021 passed by the Hon'ble High Court.

For Appellant :M/s Hari Radhakrishnan
For Respondents :M/s M.Santhanaraman, Sr.St.C. for R1
No appearance for R2 and R3

W.A.No.1201 of 2025

M/s Global Decorators India Private Limited,
Represented by its Managing Director,
Shri M.Murugan,
No.562/928, P.H.Road,
Arumbakkam, Chennai 600 106. ..Appellant/Petitioner

/versus/

1.Union of India,
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2.The Joint Director,
Directorate General of GST Intelligence,
Chennai Zonal Unit,
V and VIII Floors, Tower-II,
BSNL Building, No.16 Greams Road,
Chennai 600 006.

3.The Additional Commissioner of Central Tax and
Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Raod,
Nungambakkam, Chennai 600 034. ..Respondents/Respondents

Prayer

Writ Appeal has been filed under Clause 15 of Letter Patent to allow the writ appeal by setting aside the impugned order dated 14.08.2024 in W.P.No.3530 of 2022 passed by the Hon'ble High Court.

For Appellant :Mr.Hari Radhakrishnan
For Respondents :No appearance

COMMON JUDGMENT

(Judgement of the Court was pronounced by Dr.G.Jayachandran,J.)

The Central Excise Department initiated investigation in respect of appellants who were found to have failed in discharging their Service Tax liability under the GST Act. The action initiated by Central Excise Officers outside the local jurisdiction of tax payer is the bone of contention in these batch of appeals. That apart, the appellants, who received the show cause notices, relying on the Master Circular No:1503/2/2017-CX, dated 10/03/2017, have challenged the Show cause notices on the ground that before issuance of show cause notice, they should have been given an opportunity of pre-consultation. In some of the writ petitions, the Order-in-Original passed as a consequence of the show cause notice are challenged.

2. The conferment of power to the Central Excise Officers through out the country has emanated from the Notification No:22/2014 -Service Tax, dated 16/09/2014 issued by the Central Board of Excise and Customs (in short "CBEC") under which Officers in the Directorate General of Audit, Directorate General of Central Excise Intelligence and Directorate General of Service Tax, specified as the Central Excise Officers, are appointed, investing them with all the powers under Chapter-V of the Finance Act, 1994 and the Rules made

thereunder, through out the Territory of India, as are exercisable by the Central Excise Officers of the corresponding rank as specified.(At this juncture, it is relevant and appropriate to record that, for governing the levy of Service Tax no separate Act is legislated, instead, a new chapter is inserted in the Central Excise Act,1944 through Finance Act, 1994)

3. The Table below is the Officers specified:

Sl. No.	Officers	Officers whose powers are to be exercised
1.	Principal Director General, Central Excise Intelligence or Principal Director General, Service Tax	Principal Chief Commissioner
2.	Director General, Audit	Chief Commissioner
3.	Principal Additional Director General, Central Excise Intelligence, Principal Additional Director General, Service Tax or Principal Additional Director General, Audit	Principal Commissioner
4.	Additional Director General, Central Excise Intelligence, Additional Director General, Service Tax or Additional Director General, Audit.	Commissioner
5.	Additional Director, Central Excise Intelligence, Additional Director, Service Tax or Additional Director, Audit	Additional Commissioner
6.	Joint Director, Central Excise Intelligence, Joint Director, Service Tax or Joint Director, Audit	Joint Commissioner
7.	Deputy Director or Assistant Director, Central Excise Intelligence, Deputy Director or Assistant Director, Service Tax or Deputy Director or Assistant Director, Audit	Deputy Commissioner or Assistant Commissioner
8.	Senior Intelligence Officer, Central Excise Intelligence, Superintendent, Service Tax or Superintendent, Audit.	Superintendent
9.	Intelligence Officer, Central Excise Intelligence, Inspector, Service Tax or Inspector, Audit	Inspector

4. Based on the empowerment under the said notification, inspections were conducted by Central Excise Officers and notices were issued to the respective taxpayers. Thereafter as a follow up action, show cause notices was issued naming the adjudication authority. In some cases, SCN were issued by

Officers outside the taxpayers Zone, but later transferred to the Office of the respective Zones. In few cases, on completion of adjudication, Order- in-Original were also passed.

5. Challenging the vires of the notification conferring jurisdiction through out the territory of India to the Central Excise Officers, the consequential show cause notices and order-in-originals, a batch of writ petitions were filed under Article 226 of the Constitution of India, when came up for consideration before the Court, the learned Single Judge considering the facts of the case and the challenge to the actions taken by the department categorised the writ petitions under the following 3 heads:-

Category No.1:	Writ Petitions have been filed against the impugned Notification No.22/2014-ST, dated 16.09.2014 issued by the Central Board of Excise and Customs under power conferred by clause (b) of Section 2 of the Central Excise Act, 1944 (1 of 1944) read with Clause (55) of Section 65B of the Finance Act, 1994 (32 of 1994), Rule 3 of the Central Excise Rules, 2002 and Rule 3 of the Service Tax Rules, 1994.
Category No.2:	Writ Petitions have been filed against the impugned Show Cause Notices (SCNs) issued by the Additional Director General, Directorate of GST Intelligence of the respective Zonal Units and Principal Additional Director General, Directorate of GST Intelligence, Chennai Zonal Unit and Additional Director General, Directorate of GST Intelligence (Hqrs.) New Delhi.
Category No.3:	Writ Petitions have been filed against the impugned Orders-in-Original passed by the Adjudicating Authority which proceeded Show Cause Notices issued by the Additional Director General, Directorate of GST Intelligence of the respective Zonal and Principal Additional Director General, Directorate of GST Intelligence, Chennai Zonal Unit.

6. After examining the provisions of the Finance Act,1994, Central excise Rules and Service Tax Rules, various notifications issued in connection

with conferment of powers as well as the decisions relied by the taxpayers, the learned Judge by a common order dated 17/06/2025, upheld the validity of the Notification No: 22 of 2014 conferring power on Central Excise Officers through out the territory of India and the consequential show cause notices issued by the Central Excise Officers outside the local limits of the taxpayer.

7. Further, the learned Judge granted time to the taxpayers to challenge by way of statutory appeal, the show cause notice or/order-in-original as the case may be under the statute. Following the dictum in *M/s Redington (India) Limited case*, the other writ petitions filed, challenging the notification/show cause notice/order-in-original were also disposed on the same terms.

8. Aggrieved by the order of the Learned Single Judge, the intra court appeals are filed by the appellants herein. It is the appellants' contention that in exercise of power under Section 73 of the Finance Act read with Rule 3 of the Service Tax Rules, 1994, the Board cannot confer pan-India Jurisdiction on the Central Excise Officers to exercise their power for the purpose of implementing the Service Tax Rules, since the investigating power of a Central Excise Officer is confined to the local limits as assigned by the Board that conferment of powers on Central Exercise Officers, to exercise power through out the territory of India is not contemplated under Rule 3 of the Service Tax Rule,1994

that no Central Excise Officer can be conferred with limitless jurisdiction to exercise his powers under the provisions of the Service Tax Act, since the Service Tax Act imposes restrictions on territorial jurisdiction and hence the inspection and issuance of show cause notice issued by the Central Excise Officers, beyond the local limits is without any authority.

9. According to the Learned Counsels appearing for the appellants, the term “Local Limit”, must be understood as a territory confined to a defined part of a State. In this regard, reference was made to the judgment of the Kerala High Court in *P.Sivaramakrishnan v. State of Kerala reported in [1994 (5) TMI 24]*, wherein it was held that, the term “Local Limit” does not refer to the entire State, but a defined part thereof. Similarly, in Balaji Rice Company v. CTO reported in [1983 (4) TMI 243], the Andhra Pradesh High Court ruled that, the term “ Local Limit” cannot mean the whole of State of Andhra Pradesh. The learned counsels further contended that as the impugned Notification override the act, it needs to be quashed, since Subordinate Legislation cannot travel beyond the parent statute. In support of the said contention, the learned counsels relied on the judgment in *Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries reported in [2008 (12) S.T.R. 416 (S.C.)]*, wherein, the Hon’ble Supreme Court of India, held that clarifications/circulars, which are contrary to the statutory provision have no existence in law.

10. Yet another contention of the counsels for the appellant is that, the learned Single Judge's reliance on the earlier Notification No.38/2001- C.E. (N.T) dated 26.06.2001, to uphold the vires of the impugned Notification 22/2014 on the premise that DGGI Officers are conferred with pan-India jurisdiction, is legally and factually incorrect.

11. According to the appellants, the Notification No.38/2001-C.E.(N.T.), was issued without any reference to the Finance Act, 1994, which speaks about the residual interpretation for the words and expressions used, but not defined under Chapter V of the Finance Act, 1994 or Service Tax Rules, 1994. The learned counsels contended that while Rule 3 of the Central Excise Rules, 2002, confers power on the Central Board of Excise and Customs, to appoint Central Excise Officer by notification specifying the jurisdiction, but in the Service Tax Rules, 1994, namely, Rule 3, states that the Board may appoint such Central Excise Officer, as it thinks fit for exercising the powers under Chapter V of the Finance Act, 1994, <u>within such local limit as it may assign</u> to them. (*emphasis added)* Therefore, the learned counsels submitted that under the Notification 22/2014, issued in exercise of power under Chapter V of the Finance Act, 1994 r/w the power under Service Tax Rules, 1994, superseding the earlier notifications, the Central Excise Officers designated to exercise power under the

Service Tax rules, can exercise powers within the local limit assigned to them and not beyond.

12. To buttress the above submission, the preamble to the Notification 22/2014, has been referred, which says that the Notification is issued in exercise of power conferred under Clause (b) Section 2 of the Central Excise Act, 1994 r/w Clause 55 of Section 65B of the Finance Act, 1994, Rule 3 of the Central Excise Rules, 2002 and Service Tax Rules, 1994. Referring to the judgment of the Hon'ble Supreme Court in *Commissioner of Customs v. Sayed Ali reported [2011(265) E.L.T.17(S.C.)]* and *Canon India -vs-Commissioner of Customs reported in [2021 (376) E.L.T. 3 (S.C.)],* the learned counsels submitted that the doctrine of comity of jurisdiction requires that for proper administration of justice, there should not be an overlapping exercise of powers by multiple officers.

13. As observed earlier, we find that in some of the cases, the Central Excise Officers outside the jurisdiction of the taxpayers local limit, have caused show cause notices and directed the taxpayers to attend the adjudication proceedings outside their territorial jurisdiction. In few other cases, the situs of the adjudication is fixed within the Zonal limit of the Taxpayer.

14. Tracing the changes brought to Section 73 of the Finance Act, 1994, the learned counsels submitted that the power to issue show cause notice was conferred with the Assistant Commissioner of Central Excise or as the case may be, the Deputy Commissioner of Central Excise. Subsequently, with effect from 13.05.2005 the term "Assistant Commissioner of Central Excise" or as the case may be "Deputy Commissioner of Central Excise" was substituted with the term "Central Excise Officer". The learned counsels submitted that the legislators with a purpose had used the Article 'the' as prefix to the expression "Central Excise Officer" and not 'an' or 'a' and that the difference is very relevant and crucial for the purpose of interpretation. According to the learned counsels, the learned Single Judge had failed to appreciate the use of article 'the' as a prefix to the term "Central Excise Officer" and upheld the Notification, conferring power to the Central Excise Officer to issue show cause notices without any territorial barrier.

15. Per contra, the learned counsel appearing for the Department submitted that the learned Single Judge had examined the provisions and the intent of the impugned Notification. The learned Revenue counsel contended that tracing the legislative history of Service Tax Rules, 1994 and the amendment carried out to Section 73 of the Finance Act, 1994, the learned

Single Judge had concluded that the Board did not contemplate creation of separate cadre of officers for implementing the provision of Chapter V of the Finance Act, 1994 and therefore, the officers from the Central Excise Department were considered best suited to implement the provisions of the Finance Act, 1994. It was only after 2002, that separate Commissionerates were formed in various Metropolitan cities, and that is why the term "Central Excise Officer" was not defined in the Finance Act, 1994, or in the Service Tax Rules, 1994. Under the circumstances, the Board invoking a deeming fiction adopted the definition of Central Excise officer as found in the Central Excise Rules, for the purpose of implementing the Service Tax provisions.

16. The learned counsel for the revenue, further submitted that the definition of Central Excise Officer as found in Section 2(b) of the Central Excise Act, 1944 was made applicable for the purpose of Chapter V of the Finance Act, 1994. The Central Excise Officers, as defined under Section 2(b) of the Central Excise Act, 1944 means any other officer of the Central Excise Department or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs, thus, the definition of Central Excise Officer in Section 2(b) of the Central Excise Act, 1944, is expansive and it includes any person employed as an officer in the State Government besides officers of Central Excise Department. Thus by default,

officers of the Central Excise Department, are vested under the notification to exercise the power under Chapter V of the Finance Act, 1994, as also any person being an officer of the State Government. Since statute confers power on the board to determine the jurisdiction, the expression "Local Limit" as found in Rule 3 of the Service Tax Rules, 1994, will not fetter the right of the Board to invest power on the Central Excise Officers throughout the territory of India.

17. Heard the learned counsels for both sides and perused the records.

18. The notification 22/2014, expressly traces the source of power to issue the said notification on conferring power under the said Notification Central Excise officers mentioned therein are invested with all powers under Chapter V of the Finance Act, 1994 through out the territory of India. Section 65B of Chapter V of the Finance Act, 1994, relates to interpretation and definitions. Clause 55 of Section 65B deals with words and expressions not defined. The residual clause, says, for the purpose of definition of those words and expressions, not defined in the Chapter V of the Finance Act, 1994, the definitions in the Central Excise Act, 1944, or the Rules made thereunder, need to be borrowed, as far as possible, in relation to service tax, as they apply in relation to duty of excise.

19. A close examination of expression used in Clause 55 reveals that the borrowing of the definition under the Central Excise Act, 1944, for expressions used, but not defined in Service Tax Rules, 1994, is restricted in so far as in relation to service tax qua duty of excise. This residuary clause of interpretation, first of all, cannot be extended to the expression "Central Excise Officer". More so, when the Act confers powers upon the Central Board of Excise, to appoint such Central Excise Officers as it thinks fit for the exercise of powers under Chapter V of the Finance Act, 1994. The expression "Central Excise Officer" cannot be construed in a restrictive manner confining it to the Central Excise Officer of the local limits of the Taxpayer.

20. The Central Excise Rules, 2002, framed in exercise of the powers under Section 37 of the Central Excise Act, 1944, does not restrict the jurisdiction of the Central Excise Rules, 2002. Whereas, Rule 3 of the Service tax Rules, 1994 prior in point of time, makes a restriction regarding the jurisdiction of the Central Excise Officers to exercise the power under Chapter V of the Act. The Notification dated 16.09.2014 was issued in exercise of power conferred on the Board both under the Central Excise Act, 1944 as well as the Service Tax Rules, 1994. As per Section 2 (b)of the Central Excise Act, 1944, Central Excise Officer means, the [Principal Chief Commissioner of Central

Excise, Chief Commissioner of Central Excise, Principal Commissioner of Central Excise], Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, Joint Commissioner of Central Excise, Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under the Act.

21. The learned counsels appearing for the appellants relied upon the judgment rendered by the Andhra Pradesh High Court in ***Balaji Rice Company -vs- CTO reported in [1983 (4) TMI 243],*** which was in respect of the legislation of Andra Pradesh General Sales Tax Act, to emphasis that the Hon'ble High Court had held that the expression "local limit" should be given a limited and narrow meaning as meaning an area which is less than the whole of the State of Andhra Pradesh.

22. On examining the said judgment, we find that the Hon'ble Division Bench of the Andhra Pradesh Court, though had referred the judgment of the Hon'ble Supreme Court of India in ***Jagannath v. State of Maharashtra***

reported in [AIR 1963 SC 728], has distinguished the judgement of the Hon'ble Supreme Court to give narrow meaning to the word and expression 'local limit'. However, when we look into the judgment of the Hon'ble Supreme Court, which is in respect to Section 14(1) of the Cr.P.C., as amended by the Bombay Act (23 of 1951), we find that the Hon'ble Supreme Court has observed that the expression 'local area' includes any part of the State and it may cover more than one district". Later, in ***National Building Construction Company Limited v. Union of India and others reported in [(2019) 62 GSTR 166],*** the Hon'ble Supreme Court, while testing the vires of similar notification issued by the Board vesting pan-India power on the Central Excise officers defined under the said act, held that Central Excise Officers of DGCEI have all India Jurisdiction and can issue notices and enquire into the matters relating to service tax against the assessee/person even if the said person or assessee is registered with one or multiple commissionerate. In Para 43 of the said judgement, the Hon'ble Supreme Court has held as below:-

> "43.Consequently, it follows and we hold that the Board has wide discretion in power while fixing the local limit assigned to a Central Excise Officer. Local limit can be pan or all India. This position must be accepted as in cases of centralised registrations all India Jurisdiction is exercised. Argument and contention that use of the expression "local limit" impliedly excludes all India jurisdiction is without foundation and fallacious. The provision permits and allows

the Board to fix "local limits" and does not bar and prevent the Board from conferring all India jurisdiction. The Board is equally empowered to authorise centralised or pan India investigations to be undertaken by the Central Exercise Officers. This may indeed be desirable and necessary to curtail delay, facilitate complete and detailed investigation at one location rather than multiple investigations and enquires which would be overlapping. Multiple enquiries would be similar or identical issues are involved. A pragmatic and practical approach is required in matters of procedure."

23. The learned Single Judge while tracing the background of Notification No.22 of 2014 and comparing it with the earlier notifications particularly, Notification No.38/2001-C.E.(N.T.), dated 26.06.2001, concluded that the Officers of Directorate of Central Excise or Central Excise Officer, by default, were empowered to as act as "Central Excise Officers" for the purposes of Rule 3 of the Service Tax Rules, 1994. The learned Judge further held that Rule 3 of Service Tax Rules, 1994, though employed the expression 'local limit', the expression *per se* cannot take away the power of the Board to vest the power of Central Excise Officer, on any person referred in the Rules for the purpose of implementing Service Tax Rules, 1994.

24. In our view, the appointment of officers vested with the power to exercise and discharge the duty under Chapter V of the Act, need not be

restricted to local limits, but can be extended pan-India, in view of the fact that officers of the Directorate General of Goods and Services Tax Intelligence (DGGI) have already been empowered under Notification No.38 of 2001-C.E. (N.T.)dated 26.06.2001 to exercise pan-India jurisdiction. The subsequent Notification No.22 of 2014, dated 16.09.2014, is therefore to be read in conjunction with the Notification No.38/2001-C.E.(N.T.) dated 26.06.2001.

25. A mere reference to Section 65B and Clause 55 of the Finance Act, 1994, in the subsequent Notification No.22 of 2014 will not take away the power of the Board which is otherwise vested with them. The deeming Clause or residuary clause under Section 65B read with Clause 55 applies only as far as possible, in respect of service tax qua duty of exercise not in respect of interpretation of the expression “Central Excise Officer”.

26. The Notifications issued since 2001 have, in this regard, conferred pan-India jurisdiction upon the Central Excise Officers and the same has been acted upon throughout the country. Challenge to the plurality of jurisdiction and conferment of pan-India power on the Central Excise Officer been examined threadbare and held in favour of the Board. The notification which has sustained for decades and tested judicially cannot be upset by a pedantic interpretation.

27. The doctrine of "comity of jurisdiction" pleaded by the appellants relying on dictum laid down in ***Commissioner of Customs v. Sayed Ali*** *reported in* ***[2011) 265 ELT 17 (SC)]*** and ***Canon India Private Limited v. Commissioner of Customs, reported in [(2021) 376 ELT 3 (SC)]***, was revisited by a three Judge Bench of the Hon'ble Supreme Court of India in ***Commissioner of Customs v. Canon India Private Limited reported in [(2024) 136 GSTR 646],*** wherein it was held as under:

> "152.Further the finding in Mangali Impex that Section 28(11) is overbroad and confers the powers of the proper officer to multiple sets of customs officers without any territorial or pecuniary jurisdictional limit which in turn may lead to "utter chaos and confusion" as highlighted in Sayed Ali, is misconceived in our view. The apprehension of the petitioner therein was that plurality of proper officers empowered under Section 28 would result in more than one show cause notice and a consequent misuse of the provision, which would be detrimental to the interests of the persons chargeable with the payment of duty. Although, Mangali Impex declared Section 28(11) to be invalid on this ground, it suggested that the Board should issue instructions in its administrative capacity that once a show-cause notice is issued specifying an adjudicating authority subject to such an officer being the proper officer for the purposes of Section 28, then he or she alone should proceed to adjudicate that particular show cause notice to the exclusion of all other officers who may have power in relation to that subject-matter. We find this to be a

reasonable construal of the import and application of Section 28(11)."

28. Insofar as the alleged violation of Master Circular No.1053/2/2017-CX, dated 10.03.2017 is concerned, which envisages pre-consultation before the issuance of the show cause notice to facilitate the defaulting assessee to come forward to pay the amount, so that, the Department is not burdened with the show cause proceedings, it is a settled principle of law that the Circular issued by the Department will not have any precedence over the statute. The learned Single Judge, relying upon the judgment of the Hon'ble Supreme Court of India in ***Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries*** reported in ***[2008 (12) S.T.R. 416 (S.C.)],*** which was followed by this Court in ***Brilliant Corporate Services Private Limited (now known as M/s Brivas Private Limited) v. Commissioner of GST and Central Excise, Chennai*** reported in ***[(2022) 104 GSTR 296],*** has held that the show cause notice cannot be quashed for non-compliance with the pre-consultation process. It is suffice to reiterate that the Master Circular suggesting pre-consultation is not mandatory but only recommendatory in nature. Regarding the order-in-original passed in these cases, being a question of fact, the learned Single Judge has rightly directed the parties to prepare an appeal and granted liberty to work out their remedies in the manner known to law. Accordingly, we uphold the orders passed by the learned Single Judge in all the writ petitions.

29. In the result, **these Writ Appeals stand dismissed.** Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

(Dr.G.Jayachandran,J.) & (N.MALA,J.)
06.07.2026

Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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To

1.The Secretary, Union of India, Department of Revenue,
Ministry of Finance, North Block, New Delhi.

2.Principal Additional Director General, Directorate of GST Intelligence,
Coimbatore Zonal Unit, No.16, BSNL Building, Tower-II,
5th and 8th Floor, Greams Road, Chennai 600 006.

2.Joint Director, Directorate of GST Intelligence,
Chennai Zonal Unit, C-3, C-WING, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

3.The Chairman, Central Board of Indirect Taxes & Customs,
Department of Revenue, Ministry of Finance,
North Block, New Delhi 110 001.

4.The Joint Director, Directorate General of GST Intelligence,
Chennai Zonal Unit, V and VIII Floors, Tower II,
BSNL Building, No.16, Greams Road, Chennai 600 006.

5.The Additional Commissioner of Central Tax and Central Excise, Chennai North Commissionerate, No.26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034.

Dr.G.Jayachandran, J.
&
N.Mala, J.

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Common Judgment made in
W.A.Nos.2282 of 2025, 1969 of 2022,
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