Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8609 OF 2019
(DIARY NO.17005 OF 2018)

COMMISSIONER OF CENTRAL EXCISE, HALDIA …Appellant

VERSUS

M/S. KRISHNA WAX (P)LTD. …Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. This Appeal under Section 35L of the Central Excise Act, 1944 ('the Act', for short) arises out of Order dated 31.05.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata ('the Tribunal', for short) dismissing Appeal No. E/211/07 preferred by the Appellant herein.

2. The facts leading to the filing of this Appeal, in brief, are as under:-

a) On 23.09.2005 a search was conducted at the registered office as well as the factory premises of the Respondent

herein by the officers of the Central Excise Commissionerate on the basis that the Respondent manufactured Foots Oil, Pressed Wax, Pressed Paraffin Wax without observing the mandatory procedure and clearing Excise Duty. Soon thereafter, Writ Petition No. 2073 of 2005 was filed by the Respondent before the High Court[1] submitting *inter alia* that the Assistant Commissioner of Central Excise had no authority to proceed in the matter as no manufacturing activity was undertaken by the Respondent. The High Court by Order dated 28.11.2005 directed as under:-

> "Having heard the Learned Advocates appearing for the parties and considering the facts and circumstances of the case, I dispose of this petition by directing the respondent No.1 to decide the preliminary objection raised on behalf of the petitioners regarding the jurisdiction of the respondents to proceed in the matter under Central Excise Act before deciding any other issues in this matter on merit.
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> Since no affidavit in opposition has been used on behalf of the respondents, all allegations levelled against the said respondents in this writ petition should not be deemed to be admitted."

1 High Court of Judicature at Calcutta

b) On 21.03.2006 a Show Cause Notice was issued by the office of the Commissioner of Central Excise, Haldia, which stated *inter alia* that in terms of the aforesaid directions of the High Court, the Assistant Commissioner of Central Excise had considered the preliminary objection and decided to proceed in the matter. It further recited that from the facts available on record it appeared that manufacturing activity was being undertaken by the Respondent without following due procedure and without paying any Excise Duty. It was observed:-

> "Whereas M/s. Krishna Wax (Pvt.) Ltd., having their Registered Office at Classic Tower, 10A & 11A Floor, 56 Gariahat Road, Kolkata, had filed a writ petition (No.2073 of 2005) in High Court at Calcutta and obtained an order, whereby the respondent, namely, Assistant Commissioner of Central Excise, was to decide preliminary objection regarding jurisdiction to proceed in the matter under Central Excise Act on merit and it appears to the respondent that the matter can be proceeded with under Central Excise Act and whereas it appears from the facts mentioned below that M/s. Krishna Was Private Ltd. having their manufacturing unit at….."

After the aforesaid opening recitals, the facts were considered and finally the Respondent was called upon to show cause :-

> "i) Why the Central Excise Duty of Rs.1,56,31,712.00 (rupees one crore fifty six lakhs thirty one thousand seven hundred and twelve only) Education Cess of Rs.2,11,007.00 (rupees two lakhs eleven thousand and seven only as detailed in Annexure-A) should not be demanded and recovered under the extended proviso to Section 11A of the said Act?
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> ii) Why interest as applicable at the appropriate rate should not charged under Section 11 AB of the said Act?
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> 3.6. The "said party" is directed to produce all the evidence upon which they intend to rely in support of his defense, when the case will be heard before the Adjudicating Authority.
>
> 3.7 The "said party" should also inform whether they wish to be heard in person or through authorized representative when the case will be posted for hearing."

c) The Respondent again approached the High Court by filing Writ Petition No. 1719 of 2006, which was disposed of on 27.11.2006 by the High Court with following observations:-

> "The show cause notice has mainly been challenged on the ground that notwithstanding an order dated 28.11.2005 of this Court (P.K. Chattopadhyay, J.) directing the respondent, Commissioner of Central Excise, Anti-Evasion Unit to decide the preliminary objection raised by the petitioners regarding jurisdiction of the respondents to proceed against the petitioners under the Central Excise Act, 1944, he said respondent had not done so. It was alleged that the Show Cause Notice had been issued without deciding the preliminary objection of the petitioner.

> Mr. Tarafdar has produced the records pertaining to the case. It appears that the preliminary objection of the petitioners was decided by an order dated 15th March, 2006. A copy of the said order shall immediately be furnished to the petitioner and in any case within a week from date.
>
> … … …
>
> The petitioners shall submit their reply to the Show Cause Notice impugned within four weeks from date. It will be open to the petitioners to take objection to the jurisdiction of the concerned Respondents to proceed against the petitioner under the Central Excise Act, 1944. The adjudication proceedings shall be conducted strictly in accordance with law and in compliance with principles of natural justice.
>
> The writ application is disposed of accordingly."

d) Consequently, a copy of the Internal Order dated 15.03.2006 was furnished to the Respondent. Without filing any reply to the Show Cause Notice and, adopting the course in tune with the observations of the High Court in its Order dated 27.11.2006, the Respondent chose to file Appeal No.01/HAL/07 before the Commissioner of Central Excise (Appeals-I) Kolkata challenging the aforementioned Internal Order dated 15.03.2006. It was submitted that no manufacturing process was being

undertaken by the Respondent. An objection was taken on behalf of the Appellant that the Appeal was completely premature as the matter was not yet gone into; no reply to the Show Cause Notice was filed by the Respondent and there was, as a matter of fact, no adjudication by the concerned authority. The objections were rejected by the Appellate Authority observing that an appeal could lie against any order passed under the Act by a Central Excise Officer lower in rank to the Commissioner. It was further concluded that the process undertaken by the Respondent did not amount to manufacture as under:-

> "I, therefore, find that no new produce has emerged. The names are used interchangeably in literature, character is not changed; only by a mechanical process oil has been separated, but still a high oil content has remained in the wax. Both the raw materials and end products are sold to grease manufacturers and lubricant manufacturers. From tariff also no new entry can be cited for the product. The process involved as such cannot be called incidental to manufacture. Department has failed to discharge the burden to prove manufacture."

The appeal was thus allowed by the Appellate Authority vide order dated 10.01.2007.

e) The Appellant, being aggrieved, filed Appeal No. E/211/07 before the Tribunal, which came to be dismissed by order dated 31.05.2017. The Tribunal concluded that the decision dated 15.03.2006 was appealable before the Commissioner (Appeals) under Section 35 of the Act as it entailed civil consequences. It observed:-

> "12. On perusal of the process as stated hereinabove, we find that the Respondent imported the materials under CTH 27129090 & 27129090 amongst others and the Revenue also classified the processed material under the same tariff item. We find that the entire process undertaken by the Respondent-assessee is mainly a manual process and there is a marginal use of hydraulic pressure in the process.
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> … … …
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> 15. In the present case, we find that the imported Slack Wax, Residue Wax is in semi-solid form in drums. Foots Oil is part of Residue Wax or Slack Wax being lighter comes up on surface and siphoned by tilting the drums. The thinner Slack Wax called Foots Oil is thus separated. The pressure created by liquid through orifice for the purpose of exit is known as the hydraulic pressure. Basically, processed materials are emerging from the imported materials and the Revenue classified the processed material under the same Tariff Heading & CTH. The Hon'ble Supreme Court and the Tribunal in various decisions held that such process cannot be treated as manufacture under Section 2(f) of the Central Excise Act, 1944. Thus, we find force in the findings of the ld. Commissioner (Appeals)."

3. We heard Ms. Nisha Bagchi, learned Advocate, in support of this Appeal and Ms. Christi Jain, learned Advocate, for the Respondent.

Ms. Bagchi, learned Advocate submitted that the process of adjudication had never taken place in the matter; there was no response to the Show Cause Notice; nothing was submitted by the Respondent denying or disputing the assertions made in the Show Cause Notice and the matter was considered by the Appellate Authority and the Tribunal from completely incorrect perspective. According to her, in cases such as the present one, where the manufacturing process was undertaken and the goods were cleared without payment of any Excise Duty, the Show Cause Notice itself would cover not only the basic issue whether the process so undertaken amounted to manufacture or not but also the resultant liability, in case the process in question amounted to manufacture; and it would always be open to the assessee to make such submissions touching upon both the issues; and the proper course was to let the proceedings pursuant to the Show Cause Notice, be taken to a logical conclusion.

Ms. Christi Jain, learned Advocate for the Respondent submitted that the Internal Order dated 15.03.2006 had taken a view that the process amounted to manufacture and such assessment was arrived at without affording any hearing to the Respondent. Said order affected the interest

of the Respondent adversely and the Respondent was therefore entitled to challenge the Order dated 15.03.2006. According to her, after due service of said Order dated 15.03.2006, the Respondent was well within its rights to challenge said Order. In support of her submission, reliance was placed on the decision of this Court in ***GKN Driveshafts (India) Ltd. v. Income Tax Officers and others***[2] and of the decision of the Tribunal in ***Reliance Industries Ltd. v. Collector of Central Excise***[3]**.**

4. The Act was enacted to consolidate and amend the law relating to Central Duties of Excise. Section 3 of the Act provides that duty of excise as prescribed shall be levied and collected on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule to the Act. Section 4 deals with the subject of valuation of excisable goods for purposes of charging of duties of excise and Section 6 obliges a person who is engaged *inter alia* in the production or manufacture of any specified goods to get himself registered in such manner as may be prescribed. Section 11A of the Act deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded and is to the following effect:-

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2 (2003) 1 SCC 72
3 1987(11) ECR287 (Tri.-Mumbai)

“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 wilful misstatement 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,-

(*a*) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;
(*b*) the person chargeable with duty may, before service of notice under clause (*a*), pay on the basis of,-
(*i*) his own ascertainment of such duty; or
(*ii*)the duty ascertained by the Central Excise Officer
the amount of duty along with interest payable thereon under section 11AA.

(2) The person who has paid the duty under clause (*b*) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (*a*) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.

(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (*b*) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (*a*) of that sub-section in respect of such

amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty of excise has not been levied or paid or has been shortlevied or short-paid or erroneously refunded, by the reason of-

(*a*) fraud; or
(*b*) collusion; or
(*c*) any wilful mis-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) to (7) Omitted[4]

(7A) Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (4), the Central Excise Officer may, serve, subsequent to any notice or notices served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-paid or erroneously refunded for the subsequent period, on the person chargeable to duty of central excise, then, service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1) or subsection (3) or sub-section (4) or sub-section (5), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice or notices.

4 By Act 20 of 2015.

(8) Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), as the case may be.

(9) Where any appellate authority or Tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (*a*) of sub-section (1).

(10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.

(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 in respect of cases falling under subsection (1);
(*b*) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4)

(12) Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified.

(13) Where the amount as modified by the appellate authority or tribunal or court is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount.

(14) Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

(15) The provisions of sub-section (1) to 14 shall apply, mutatis mutandis, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

(16) The provisions of this section shall not apply to a case where the liability of duty not paid or short-paid is self-assessed and declared as duty payable by the assessee in the periodic returns filed by him, and in such case, recovery of non-payment or short-payment of duty shall be made in such manner as may be prescribed.

Explanation 1.-For the purposes of this section and section 11AC,-

(*a*) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
(*b*) "relevant date" means,-
(*i*) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be

> filed under this Act and the rules made thereunder;
> (*ii*) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed, the date on which such return has been filed;
> (*iii*) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;
> (*iv*) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
> (*v*) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;
> (*vi*) in the case where only interest is to be recovered, the date of payment of duty to which such interest relates.
>
> (*c*) Omitted.
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> **Explanation 2:-** For the removal of doubts, it is hereby declared that any non-levy, short levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before the date on which the Finance Bill, 2015 receives the assent of the President, shall be governed by the provisions of section 11A as amended by the Finance Act, 2015."

5. Section 11A thus deals with various facets including non-levy and non-payment of excise duty and contemplates issuance of a show cause notice by the Central Excise Officer requiring the "person chargeable with duty" to show cause why "he should not pay the amount specified in the notice." In terms of sub-section 10 of said Section 11A, the concerned person has to be afforded opportunity of being heard and after considering

his representation, if any, the amount of duty of excise due from such person has to be determined by the Central Excise Officer. Without going into other details regarding the period of limitations and the circumstances under which show cause notice can be issued, the crux of the matter is that such determination is after the issuance of show cause notice followed by affording of opportunity and consideration of representation, if any, made by the concerned person.

6. If the process or activity undertaken does not amount to manufacture or if no duty is payable for any reason including the benefit under any scheme of exemption holding the field, it shall always be open to the concerned person to project such view point while making any representation in response to the show cause notice. There can be variety of cases namely that the process in question does not amount to manufacture; and if it does, the goods would be entitled to avail benefit of any prevalent exemption; or that the duty would be chargeable at a rate lesser than the rate at which it was set out in the show cause notice or that the quantity of goods manufactured by the concerned person was in any way lesser than what was attributed in the show cause notice, or that the benefit of any remission has to be made available etc. All such possible

submissions can always be advanced and considered during the course of hearing pursuant to issuance of show cause notice.

7. However, the scheme of Section 11A does not contemplate that before issuance of any show cause notice, there must, *prima facie*, be: (a) a preliminary determination that the process or activity undertaken in the matter amounts to manufacture; and (b) before arriving at such preliminary determination, any hearing to the concerned person is contemplated. In other words, there is no segregation of the matter at different stages and all the possible contours of the matter including whether the process in question amounts to manufacture or not are to be gone into while considering the response to the show cause notice itself. It is only after considering all the relevant aspects of the matter that the final determination under sub-section 10 of Section 11A is to be arrived at.

8. The issuance of show cause notice under Section 11A also has some significance in the eyes of law. The day the show cause notice is issued, becomes the reckoning date for various issues including the issue of limitation. If we accept the submission of the respondent that a *prima facie* view entertained by the department whether the matter requires to be

proceeded with or not is to be taken as a decision or determination, it will create an imbalance in the working of various provisions of Section 11A of the Act including periods of limitation. It will be difficult to reckon as to from which date the limitation has to be counted.

9. In the present case, the respondent had not registered itself and was not paying any excise duty on the products that it was manufacturing. The search conducted by the Department at the registered office and the factory premises of the respondent led to the recovery of certain material on the basis of which the Department was considering the matter. At that stage, a writ petition was filed in which an order was passed by the High Court on 28.11.2005 directing the appellant to decide whether the Department had jurisdiction to proceed in the matter before deciding any other issues on merits. As stated above, the provisions of the Act do not contemplate any such *prima facie* determination to be arrived at and requiring that a copy of such determination to be submitted to the concerned person and only thereafter to proceed in the matter. Nonetheless, since a direction was issued by the High Court, the Department in deference to such direction did consider the matter and by an Internal Order dated 15.03.2006 *prima facie* recorded an opinion that the authorities under the Act had jurisdiction to proceed in the matter. Since the provisions of the Act do not contemplate

any *prima facie* determination which must be communicated to the concerned person, the Department was justified in not communicating the Internal Order on its own. The matter was correctly assessed by the High Court on the next occasion when in spite of having directed that a copy of the Internal Order be supplied, it acknowledged that the remedy of the respondent lied in submitting reply to the show cause notice, in which reply it would be open to the respondent to take objections to the jurisdiction of the appellant to proceed against the respondent under the provisions of the Act.

10. The communication of the Internal Order dated 15.03.2006 was only in deference to the order passed by the High Court. At the cost of repetition, it must be stated that neither the Act contemplates any such *prima facie* determination which must be communicated only whereafter the proceedings could be initiated nor was such course undertaken by the Department on its own. Therefore, merely because the Internal Order was communicated to the respondent, it would not afford the respondent a cause of action to file an appeal against said Internal Order. The communication of said Internal Order was only in obedience of the directions issued by the High Court. It was not a decision or determination which was arrived at in terms of sub-section 10 of Section 11A. The

respondent therefore could not have preferred any appeal against said Internal Order dated 15.03.2006. The Appellate Authority as well as the Tribunal, in our view, completely failed to appreciate this basic distinction.

11. It must be noted that while issuing a show cause notice under Section 11A of the Act, what is entertained by the Department is only a *prima facie* view, on the basis of which the show cause notice is issued. The determination comes only after a response or representation is preferred by the person to whom the show cause notice is addressed. As a part of his response, the concerned person may present his view point on all possible issues and only thereafter the determination or decision is arrived at. In the present case even before the response could be made by the respondent and the determination could be arrived at, the matter was carried in appeal against said Internal Order. The appellant was therefore, justified in submitting that the appeal itself was pre-mature.

12. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a Writ Court to entertain a petition under Article 226 of the Constitution and that the concerned person must first raise all the objections before the authority who had issued a show cause notice and the redressal in terms of the

existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in ***Union of India and another vs. Guwahati Carbon Limited***[5], it was concluded; "The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution", while in ***Malladi Drugs and Pharma Ltd. vs. Union of India***[6], it was observed:-

> "…The High Court, has, by the impugned judgment held that the Appellant should first raise all the objections before the Authority who have issued the show cause notice and in case any adverse order is passed against the Appellant, then liberty has been granted to approach the High Court…
>
> …in our view, the High Court was absolutely right in dismissing the writ petition against a mere show cause notice."

It is thus well settled that writ petition should normally not be entertained against mere issuance of show cause notice. In the present case no show cause notice was even issued when the High Court had initially entertained the petition and directed the Department to *prima facie* consider whether there was material to proceed with the matter.

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5 (2012) 11 SCC 651
6 2004 (166) ELT 153 (S.C.)

13. We now deal with the decisions relied upon by Ms. Jain, learned counsel for the appellant. The decision of this Court in ***GKN Driveshafts (India) Ltd.*** [2] was in the context of Section 148 of the Income Tax Act. Said Section 148 itself contemplates that the Assessing Officer shall, before issuing any notice under said Section 148, record his reasons for issuing such notice. In the backdrop of such requirement, this Court had observed:-

> **"5.** We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

The decision of the Tribunal in the case of ***Reliance Industries Ltd.***[3] was also in a completely different context. The order of the Collector dated 03.03.1986 which was subject matter of appeal in that case, was a record of a personal hearing in the course of the adjudication proceeding that was communicated to the assessee. It was therefore concluded that an appeal

against such order would be maintainable. The point of distinction is that it was communicated by the Department during the course of adjudication proceedings whereas in the present matter there was no such communication by the Department on its own and the order dated 19.03.2016 was not a part of any adjudication proceedings. The proceedings would have begun only after the issuance of show cause notice under Section 11A of the Act.

14. We must at this stage refer to an aspect which was projected after the judgment was reserved in the matter. By filing an application for directions, attention of the Court was invited to Circular dated 22.08.2019 issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell), the relevant portion of which is to the following effect:-

> "In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 and made applicable to Service Tax vide Section 83 of the Finance Act, 1994, the Central Board of indirect Taxes and Customs fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Courts and Supreme Court.

S. No.	Appellate Forum	Monetary Limit
1.	CESTAT	Rs.50,00,000/-
2.	High Courts	Rs.1,00,00,000/-

3.	Supreme Court	Rs.2,00,00,000/-

2. This instruction applies only to legacy issues i.e. matters relating to Central Excise and Service Tax, and will apply to pending cases as well.

3. Withdrawal process in respect of pending cases in above forums, as per the above revised limits, will follow the current practice that is being followed for the withdrawal of cases from the Supreme Court, High Courts and CESTAT. All other terms and conditions of concerned earlier instructions will continue to apply.

4. It may be noted that issues involving substantial questions of law as described in para1.3 of the instruction dt 17.08.2011 from F.No.390/Misc/163/2010-JC would be contested irrespective of the prescribed monetary limits."

15. In the present case, there was no assessment and computation of any duty element. The matter had not gone beyond the Show Cause Notice. The questions in the matter pertained to the correctness of the view whether there was any adjudication in the matter and whether the appeal at the instance of the Respondent was maintainable. In our view the issues involved in the matter do not strictly come within the confines of the aforesaid Circular.

16. We therefore allow this appeal, set aside the appellate order dated 10.01.2007 and the order under appeal and direct that the proceedings

pursuant to show cause notice dated 21.03.2006 be taken to logical conclusion. The respondent shall be entitled to put in its response to said show cause notice within three weeks from the date of this judgment and shall also be entitled to place such material on which it seeks to place reliance, in support of its case. The matter shall thereafter be proceeded with in accordance with law.

17. The appeal stands allowed in aforesaid items. No costs.

…….J.
[Uday Umesh Lalit]

…….J.
[Vineet Saran]

New Delhi;
November 14, 2019.