
(2005) 05 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8177 of 2004

Electrolux Kelvinator Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Constitution of India, 1950 — Article 19, 226, 266
Customs Tariff Act, 1975 — Section 9A, 9B

Citation : (2005) 3 RLW 1949 : (2005) 3 WLC 743

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Paras Kuhad, for the Appellant; Bajrang Lal Sharma and C.S. Sharma, Krishnan Venugopal, K.K. Sharma and Sudhir Gupta, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—This writ petition is directed against the initiation notification dated 19.7.2004.

2. Brief facts of the case are that the petitioner is engaged in manufacturing of Refrigerators. This factory is located at Vigyan Nagar, Opposite RIICO Office, Shahjahanpur, District Alwar, Rajasthan. For the manufacture of its Refrigerators the petitioner imports various types of compressors mainly from Malaysia and China at internationally competitive price.

3. M/s. BPL Engineering Limited filed a complaint before the designated authority in the month of February, 2004 alleging dumping of certain compressors (Low Temperature Application compressors of a kind used in refrigerating equipment, used in domestic application refrigerators) imported from China and Malaysia.

4. The complaint filed by the M/s. BPL Engineering Ltd. is with regard to the year 2003-04.

5. Pursuant to the aforesaid complaint respondent No. 2 issued a letter dated

5.3.2004 to some of the manufacturers of compressors in India and specified the product under consideration as "compressors of a kind with cooling capacity below 600 BTU per hour used in refrigerating equipment or hermetically sealed compressors." Through the aforesaid letter the petitioner was called upon to furnish the following information: -

a) Whether the Indian manufactures support, oppose or are neutral to the proposed investigation?

b) Whether the manufacturers in India manufacture subject goods for self-consumption or sale.

c) The manufacturers were asked to provide production figures, self-consumption figures, domestic sale and export sale figures from 2000-01 to December 2003. The respondent No. 2 also called for the said information for January 2003 to December 2003.

d) The manufactures were also called upon to state whether the manufacturers themselves imported subject goods.

6. The respondent No. 2 also initiated the investigation vide initiation notification dated 19.7.2004 into the alleged dumping of certain compressors originating in or exported from China and Malaysia.

7. The period of investigation covered was notified to be April, 2003 to March 2004 while the information provided by the domestic producers in terms of letter of the Designated Authority dated 5.3.2004 pertained to the period January 2003 to December 2003.

8. Prior to filing this writ petition the petitioner vide letters, addressed to the Designated Authority, dated 16.9.2004, 29.9.2004, 18.10.2004, 5.11.2004 and 17.11.2004 expressed its apprehensions about the present investigations. The petitioner vide its letter dated 5.11.2004 also pointed out to the Designated Authority that the investigations are without jurisdiction and they do not satisfy the pre-conditions of Rule 5 for any initiation. In fact even prior to initiation of the investigation the petitioner had submitted to the designated authority vide letter dated 11.3.2004 that the complainant did not have the required standing to file the petition as their production construed less than 25% of the total production in the country.

9. The petitioner raised preliminary objections on the jurisdiction the Designated Authority and pointed out that the investigations needs terminated on this grounds alone.

10. The petitioner challenged the action of the Designated Authorised anti-Dumping Duties, Ministry of Commerce, Udyog Bhavan-respondent No. 2 on the ground of jurisdiction as well as which is without folio mandatory provisions of Rule 5.

11. Learned counsel for the petitioner referred Rules 5, which under:

Initiation of investigation-

(1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority and the application shall be supported by evidence of

(a) dumping

(b) injury, where applicable, and

(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless-

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestics produces of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that that there is sufficient evidence regarding

(i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a casual link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation-For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by the portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

12. After referring Rule 5 Mr. Kuhad submits that there are certain mandatory requirements for valid initiation of an investigation and after being satisfied prior to initiation they can only initiate the investigation. The conditions precedent are that the Designated Authority shall determine prior to the initiation of an investigation that the application has been filed by or on behalf of the Domestic

Industry. There should be sufficient evidence for the product under consideration with regard to dumping, injury and causal link. The adequacy and accuracy of the evidence is examined by the Designated Authority prior to the initiation of the investigation.

13. From the data supplied by the Application in the non- confidential version of the application, it is clear that the investigations have been initiated without adhering to the conditions mentioned above.

14. Learned counsel for the petitioner also referred Rule 5(3)(a) and submitted that a determination made on incorrect facts is an incurable defect which cannot be revisited by the Designated Authority after the initiation of the investigation.

15. Thus the Designated Authority has acted completely without jurisdiction and has exercised his jurisdiction without caring for the requirement of the law and in this manner the very initiation of enquiry stands vitiated by lack of jurisdiction.

16. The initiation of the investigation is also challenged on the ground that the information was sought from manufactures and other (other than complainant) for compressors having a capacity upto 600 BTU whereas the investigation have been initiated for compressors of capacity upto 875 BTU. The complainant has not given specific figures of production and for the same period complainant has given contradictory figures. The petitioner has a statutory right to seek information in the matter under investigation. Without furnishing the information to the petition the action of the Designated Authority is contrary to the provisions of Article 19 and also the investigation has been conducted in violation of the principle of natural justice.

17. The respondents have raised the preliminary objections regarding the maintainability of the writ petition on the ground that the writ petition filed by the petitioner is premature as it seeks judicial review only in respect of formation of opinion whether the investigation should be proceeded further or not.

18. Second on the ground of territorial jurisdiction as the cause of action has arisen outside the State of Rajasthan.

19. The maintainability of writ petition is also challenged on the ground of alternative remedy as the petitioner has not approached with clean hands and it has concealed the fact that its registered office and the corporate office are in Delhi and Gurgaon respectively.

20. So far as the preliminary objections are concerned, learned counsel for the respondent Nos. 3 and 5 submitted that the petition is premature as in the petition the petitioner has challenged initiation of anti dumping investigation. After investigation if the Designated Authority arrives at preliminary findings or final findings that the exporters from China and Malaysia have been dumping certain compressors in India, which has caused material injury to the domestic industry, the Designated Authority can only make a recommendation to impose anti-dumping duties. It is only when the Central Government accepts these

recommendations that anti-dumping duties would be imposed, it is only at that stage that the petitioner would suffer any harm on the basis of which it could maintain a writ petition but even then it has the alternative remedy of an appeal.

21. While raising the preliminary objections learned counsel for the respondents gave much emphasis that the Court ought to have decided the preliminary objections first before entertaining the writ petition on merit. In support of their submissions they placed reliance on the judgment rendered by the Hon''ble Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, wherein the Hon''ble Supreme Court has held that "we are of the considered opinion that the question of jurisdiction should be first decided by us before going into the merits of the case in hand. As a matter of fact, we felt it would have been more appropriate on the facts of these cases if the High Court had proceeded under Order 14 Rule 2 of the CPC by deciding the question of jurisdiction as a preliminary issue first instead of deciding the case on merit."

22. After referring the aforesaid judgment they submits that it is well settled proposition of law and it is the duty of the High Court under Article 266 of the Constitution to decide the issue of maintainability as a preliminary issue first.

23. Learned counsel for the respondents also placed reliance on the case of Manubhai J. Patel and Anr. v. Bank of Baroda and Ors. reported in, (2000) 10 SCC 253 , wherein the Hon''ble Supreme Court has held that when the jurisdiction of the High Court was challenged as a preliminary objection, then it should be decided first by the High Court before entering into the merits of the case. The Hon''ble Supreme Court also held as follows:-

"Since the question about the maintainability of the appeal against the interim order, passed by the Single Judge of the Bombay High Court, was specifically raised on behalf of the appellants in the High Court, the Division Bench before proceeding to determine the amount of royalty, ought to have decided the preliminary objection as to the maintainability of the appeal. This having not been done, the ends of justice, we feel, have suffered."

24. After referring the aforesaid judgments they raised the preliminary objections first with regard to the maintainability of the writ petition.

25. It is submitted that the present writ petition is premature and therefore must be dismissed on this ground alone. It seeks to challenge an initiation notification whereby the Designated Authority has merely initiated an investigation regarding the imposition of anti-dumping duty on the import of certain compressors from China RR and Malaysia and that it is open to the Petitioner to participate in the proceedings before the Designated Authority and put forth its views, which admittedly the petitioner has done. Ultimately, in case the Designated Authority arrives at a conclusion that no imposition of anti- dumping duty is called for, the investigation would be terminated/closed under Rule 14 of the Rules. Further, even in case the Designated Authority arrives at the preliminary finding under Rule 12 or final findings under Rule 17 that it is desirable to impose anti-dumping

duty on the goods in question, it can only make a recommendation in this regard to the Central Government and the final decision regarding the imposition of provisional duties under Rule 13 or final duties under Rule 18 can be made only by the Central Government.

26. Learned counsel for the respondents also referred the case of Rajasthan Textile Mills v. Dir. General of Anti-Dumping 2002 (149) E.L.T. 45 wherein the Court has held that a writ petition against an anti-dumping investigation is maintainable. After referring this judgment it was submitted that this was in the context of a case where preliminary findings had already been issued.

27. In support of their submissions they referred the case of Indian Express Newspapers v. Union of India 2003(158) ELT A 225 wherein the Hon"ble Supreme Court has held that a writ petition against preliminary findings is not maintainable.

28. The aforementioned decision of the Hon"ble Supreme Court arose out of a SLP filed against a Division Bench of the Hon"ble Delhi High Court reported as Indian Express Newspapers Ltd. Vs. Union of India (UOI), In that case, the Hon"ble High Court held that a writ petition challenging the preliminary findings in an anti-dumping investigation is premature when the Designated Authority is still seized of the investigation and the hearing is continuing. The Hon"ble Court further held as under:-

"In our opinion, the (writ petitions challenging the preliminary findings) are premature. The petitioners are at liberty to raise their contentions whatever they may be before the Designated Authority who is still seized of the investigation and is admittedly holding a hearing today. In spite of the preliminary findings having been submitted to the Central govt., imposition of duty whether provisional or otherwise would not follow as a matter of course or routine. The Central Govt. May or may not impose duty. If the Central Govt. may decide in favour of imposing duty, whether provisional or otherwise, the petitioners would have the remedy available to them under the law. It is cannot be lost sight of that the imposition of provisional duty is guided by the paramount consideration of protecting the domestic newsprint industry and eliminating dumping. Tampering with the process midway, may delay the imposition of provisional duty, which if warranted otherwise would itself amount to causing an injury not capable of being repaired at all.

For the foregoing reasons we are of the opinion that no case is made out for interfering at this stage of preliminary findings."

29. On a SLP being filed against the above decision, the Hon"ble Supreme Court upheld the judgment of the Delhi High Court and dismissed a SLP challenging the order of the High Court of Delhi. The Hon"ble Supreme Court in its order dismissing the SLP has stated as follows:-

"The view taken by the High Court is that the writ petition filed by the petitioner

herein was premature. We enquired from the learned counsel for the Union of India as to what action, if any, the Union of India proposes to take in this matter. Learned counsel was unable to say anything in the absence of instructions to him in this behalf. With this kind of response of the Union of India, it is difficult to doubt the correctness of the decision of the High Court that the writ petition was premature. It is difficult to doubt the correctness of the decision of the High Court that the writ petition was premature. This being so, we do not consider it necessary to examine the question raised in this SLP because there does not appear to be any likelihood of any imminent prejudice to the petitioner."

30. The petitioner replied the preliminary objections and submitted that this Court has territorial jurisdiction because of the reason that the petitioner has a plant to manufacture refrigerators at Vigyan Nagar, Opposite RIICO Office, Shahjahanpur, District Alwar (Rajasthan). Anti-dumping Rules provide specific right to the industrial user under Rule 6(5). It is also undisputed position that the petitioner is an industrial user of subject goods at Rajasthan. It is also submitted that the subject goods i.e., Compressors are being imported/procured from China/Malaysia as well as from the complaining domestic industry in the State of Rajasthan at the factory of the petitioner and are being consumed in the factory of the petitioner. Thus the petitioner is an industrial user having its production facility and operations in the State of Rajasthan.

31. Since the petitioner is admittedly an importer and Industrial user procuring and consuming the product under consideration in the State of Rajasthan and the fact that the right of the petitioner to produce in the most cost effective and efficient manner would get restricted in relation to its operations at its factory at Rajasthan, there is sufficient cause of action arising within the jurisdiction of the High Court and this High Court has jurisdiction to entertain present writ petition.

32. Mr. Kuhad further tried to distinguish the judgment of Hon'ble Supreme Court referred by the respondents in the case of UOI v. Adani Exports (supra) and submitted that the Hon'ble Supreme Court in this case has held that the territorial jurisdiction shall lie with the courts where the cause of action, in part or full, has arisen. This case also rules that mere existence of a head office in a particular place shall not ipso facto confer jurisdiction.

33. Applying the ratio decided by the Hon'ble Supreme Court in Adani's case Mr. Kuhad further submits that part cause of action has arisen at Rajasthan as the petitioner is an industrial user situated in the State of Rajasthan and having manufacturing operations at Rajasthan. The part cause of action is available to the petitioner as the factory of the petitioner is situated at Rajasthan.

34. Mr. Kuhad also referred para 9 and 10 of the Adani's case and after referring the aforesaid paras submitted that the contentions of the respondents are without any factual or legal merit. It is also submitted that the part of the cause of action arises under the jurisdiction of the Court.

35. He also referred certain paras of the judgment of the Hon'ble Supreme Court

in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , wherein it has been held that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court shall have jurisdiction in the matter.

36. Learned counsel for the petitioner also tried to distinguish all the judgments, which are referred by the respondents so far as the territorial jurisdiction is concerned. The concept of cause of action has been explained in the case of Rajasthan High Court Advocates Association Vs. Union of India and Others, wherein the Hon"ble Supreme Court has held as under:-

"The expression "cause of action" has acquired a judicial-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself.

37. So far as the argument advanced on behalf of the respondents that the writ petition is not maintainable as being premature, learned counsel for the petitioner referred a judgment passed by the Division Bench of this Court in Rajasthan Textile Mills v. Designated Authority (D.B. Civil Writ Petition Nos. 4629/2001 and 718/2002 decided on 29.5.2002 reported in 2002 (149) ELT 45 and submits that the petitioner"s case is squarely covered by this judgment as the Division bench has passed the judgment after taking note of the decision passed by the Hon"ble Supreme Court in the case of Indian Express Newspapers. The submissions made on behalf of the respondents that the judgment of the Division Bench of this High Court is not applicable in the facts and the circumstances of the petitioner"s because it is per incuriam, as it is contrary to the judgment passed by a coordinate Bench of the Delhi High Court in "Indian Express Newspapers and it is not more a good law as the Hon"ble Supreme Court has upheld the judgment of the Delhi High Court.

38. After referring the judgments of the Hon"ble Supreme Court and the Division Bench of this High Court learned counsel for the petitioner submits that the Designated Authority exercises powers vested in him strictly in accordance with the mandate of law. If the exercise of a power is preceded by mandatory conditions, failure to adhere to those conditions would make the entire process ab initio null and void, such an infirmity or nullity cannot be improved or cured subsequent to the state provided for in the statute.

39. It has been contended by the respondents that initiation of investigations dated 19.7.2004 is nothing but a mere show cause notice issued by the Designated Authority calling upon exporters as to why anti-dumping duties should not be levied on their exports.

40. It is submitted on behalf of the petitioner that the comparison of an anti-dumping investigation initiation notification with a show cause is totally ill conceived. Secondly, the liability in terms of a SCN is generally specified whereas

an initiation notification is the beginning of a detailed enquiry subject to the strict fulfillment of the conditions precedent specified, in the law.

41. It is also submitted that if the intent of the legislature were to initiate an anti-dumping enquiry, the same would have been specified accordingly in the law.

42. He further submits that the decisions relied upon by the respondents are not applicable to the facts of the present case. Learned counsel for the petitioner tried to distinguish the judgments of the Hon'ble Supreme Court in the case of *Dr. Shashank v. Commissioner* (2001(132) ELT 268 *Union of India v. Polare Marmo Agglomerates* (1997(96) ELT 21 and *Commissioner of Customs and Central Excise and Others Vs. Charminar Nonwovens Ltd.*,

43. On merit also learned counsel for the petitioner submits that Rule 5 creates jurisdiction for initiation of investigation confers the power in conditional terms. He referred Rule 5(1), (2) and (3). After referring Rule 5 Mr. Kuhad submits that the Designated Authority's power to initiate an investigation is conditioned by a statutory obligations to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of domestic industry. There is a condition precedent that the Designated Authority is restricted to not initiate an investigation unless (a) it determines that the application is on behalf of domestic industry and (b) it examines and satisfies itself that there is sufficient evidence regarding dumping injury and casual link etc.

44. In the instant case, the Designated Authority did not even apply its mind to this issue. To this effect he referred the order dated 19.7.2004 wherein under para 2 at para 69 of paper book, the designated Authority merely held ipse-dixit that "after examining the details of evidences and responses from the known procedures in India the Authority notes that the production of the petitioners constitute a major portion of Indian production thought he application is also supported by M/s Techamshah Production. The Authority after examining the above determines that the petitioner is a major producer of the subject goods in India accounting for a major portion of subject goods in India and therefore petitioners thus constitutes domestic industry within the meaning of Rule 2(b) read with Rule 2 (d) and it satisfied the criteria of standards to file a petition." Thus the designated Authority neither applied its mind to the requirement of Rule 5 nor examined the material relevant to jurisdictional issues of Rule 5, nor analyzed such material nor recorded any reasoning for holding that the application can be said to be filed by domestic industry.

45. Per contra learned counsel appearing for the respondents has submitted that in the present case, the petitioner has challenged the initiation notification dated 19.7.2004 which in effect is nothing but a mere show cause notice issued by the Designated Authority to exporters as to why anti-dumping duties should not be levied on their exports of certain compressors originating in or exported from China and Malaysia on the basis that such compressors are being dumped.

46. In support of their submissions they placed reliance on the judgments referred by the Hon"ble Supreme Court in the following cases:

- (1) Dr. Shashank v. Commissioner of Customs (2001(132 E.L.T. 268
- (2) Union of India v. Polar Marmo Agglomerates (1997(96) E.L.T. 21
- (3) Commissioner of Customs and Central Excise and Others Vs. Charminar Nonwovens Ltd.,
- (4) Navinchandra N. Majithia Vs. State of Maharashtra and Others,
- (5) National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others,
- (6) Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another,
- (7) M/s. Chetak Construction Ltd. Vs. Om Prakash and Others,
- (8) The Ramjas Foundation and Others Vs. Union of India and Others,

47. Learned counsel for the respondents also submit that no prejudice would be caused to the petitioner by permitting the investigation to continue, it is clear from Section 9A and 9B of the Customs (Tariff) Act, 1975, as amended, the only relevant issues in an anti-dumping investigation are whether the exporters are guilty of dumping and whether the dumped goods have caused material injury to the domestic industry. Therefore, the burden of the investigation necessarily falls on the exporters and the domestic industry.

48. Learned counsel for the respondents also controverted the fact that any part of the cause of action has arisen within the territorial jurisdiction of this Court as the petitioner has its registered office at New Delhi and Corporate office at Global Business Park, Gurgaon.

49. Learned counsel for the respondents also submits that the writ petition challenges the initiation of the anti-dumping investigation, which took place at New Delhi. All of the actions taken by the Designated Authority that have been complained against by the petitioner in the writ petition in support of the cause of action also took place at New Delhi. The petitioner has its registered office at New Delhi and has also been participating in the investigation from New Delhi through its consultants. The prayer in the writ petition is to quash the initiation notification made at New Delhi and to restrain the respondent No. 2 Designated Authority from proceed in with the investigation, which is taking place at New Delhi. It is therefore, submitted that no part of the cause of action arises or has arisen within the territorial jurisdiction of this Court.

50. It is also contended that the petitioner has not approached this Court with clean hands insofar as it has concealed the facts and has made misleading statements with the intent of forum- shopping in order to mislead this Court with respect to territorial jurisdiction. He also referred paragraph Nos. 2 and 28 of the writ petition.

51. Heard rival submissions of the learned counsel for the respective parties and carefully perused the relevant provision parties and carefully perused the relevant provision of law as well as the judgments referred by the respective parties.

52. First I like to deal with the preliminary objections raised on behalf of the respondents with regard to the territorial jurisdiction. Upon careful consideration of the judgments referred by the respective parties to this effect and the arguments advanced on behalf of the parties, undoubtedly it is not disputed that one of the factory is situated at Shahjahanpur, District Alwar, (Rajasthan).

53. In the case of Rajasthan High Court Advocate Association v. Union of India (supra) the Hon"ble Supreme Court has held that expression "cause of action" has acquired a judicially- settled meaning. In the restricted sense cause of act in means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself.

54. I also considered the judgment rendered by Hon"ble Supreme Court in the case of Kusum Ingots and Alloys Ltd. v. Union of India (supra) wherein the Apex Court has held that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

55. As it is not disputed that the factory of the petitioner is situated in the State of Rajasthan, part of the cause of action is available to the petitioner, so far as the territorial jurisdiction is concerned, I am fully agree with the submissions made on behalf of the petitioner and the present petition is maintainable in this Court as the part of the cause of action is available to the petitioner herein the State of Rajasthan.

56. Now the question is with regard to the objections raised on behalf of the respondents that this present petition is premature as the petition is filed against the show cause notice dated 19.7.2004. The reliefs are claimed by the petitioner to issue a writ of certiorari for quashing and setting aside initiation notification dated 19.7.2004 and to restrain the respondent No. 2 from proceeding further in the matter of investigation.

57. I carefully considered rival submissions on this point and examined the judgments referred by the respective parties. Considering the submissions advanced on behalf of the respondents it is not disputed that the petitioner has challenged the initiation notification dated 19.7.2004 and it is also not disputed that the notification dated 19.7.2004 is nothing but mere a show cause notice issued by the Designated Authority to exporters as to why anti-dumping duties should not be levied on their exports of certain compressors originating in or exported from China and malaysia on the basis that such compressors are being dumped.

58. I carefully considered the judgment of Hon''ble Supreme Court rendered in the case of Dr. Shashank v. Commissioner of Customs (supra) wherein the Hon''ble Supreme Court has held as under:-

"We see no reason to interfere with the order of the High Court which dismissed the writ petition filed challenging the show cause notice that was issued. The High Court should not have entertained the writ petition under Article 226 of the Constitution of India against the show cause notice issued under the Customs Act. The more appropriate remedy for the person aggrieved is to file a reply to the show cause and take recourse to the proceedings available under the Act."

59. The Hon''ble Supreme Court in the case of Union of India v. Polar Marmo Agglomerates (supra) has held that "a High Court should not interfere, in a writ petition, at the stage of the show cause notice to take over a fact finding investigation which is similar to the investigation being conducted by the Designated Authority in the present case. It is also held that the respondents were served with a notice to show cause why the agglomerated marble should not be exigible to excise duty under Tariff heading 68.07. It is further observed that we find that the question involved is a question of fact, "Whether the properties and characteristics of agglomerated marble remain the same as those of excavated marble?" We find that the High Court has gone into questions of fact to resolve this question. The resolution of questions of fact such as this should, we think, be best left to the fact finding authorities constituted under the relevant statute. The High Court should not have interfered, in a writ petition, at the stage of show cause notice to take over that fact finding investigation."

60. The same view has been taken by the Hon''ble Supreme Court in the case of CCE v. Charminar (supra) the at the writ petition against the show cause notice is not maintainable.

61. I fully convinced with the submissions made on behalf of the respondents that it is a mere initiation notification, which is nothing but in the nature of show cause notice.

62. The petitioner has failed to convince this Court and make out any case as to who this Court require to interfere in the show cause notice/initiation notification while exercising power under Article 226 of the Constitution.

63. Consequently, I am not convinced with the submissions made on behalf of the petitioner and this present petition is not maintainable against the show cause notice in view of the ratio decided by the Hon''ble Supreme Court referred herein above. The writ petition deserves to be dismissed as being premature.

64. Merit part of the petition and other issues are not necessary to discuss. Since I am not convinced with the submissions advanced on behalf of the petitioner that the present petition is maintainable against the initiation notification/show cause notice, therefore, without discussing on merit the writ petition stands dismissed. Consequently, the interim order granted by this Court on 12.1.2005

also stands vacated.