

(2010) 11 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11855 of 2010

Shakti Me-Dor Limited and Another

APPELLANT

Vs

The Commissioner of Customs Central Excise and Service Tax
and Commissionerate and Another

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Central Excise Rules, 2002 — Rule 10, 12, 25, 26, 4
Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 — Rule 6
Central Excises and Salt Act, 1944 — Section 11A, 11A(1), 11AB, 11AC
Constitution of India, 1950 — Article 226

Citation : (2011) 1 ALT 354 : (2010) 182 ECR 186 : (2011) 268 ELT 51

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : G. Madhusudhan Reddy, for the Appellant; A. Rajashekar Reddy, SC for CB Excise, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—The practice of entertaining Writ Petitions questioning the legality of a show-cause notice, stalling the proposed enquiry and retarding the investigative process to ascertain facts with the participation and in the presence of the parties, must be deprecated. Unless the High Court is satisfied that the show-cause notice is non-est Writ Petitions should not be entertained for the mere asking, and as a matter of routine, and the petitioner should, invariably, be directed to respond to the show-cause notice and take all stands, highlighted in the Writ Petition, therein. The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, ; Divisional Forests Officers and Others Vs. M. Ramalinga Reddy, ; Saravani Impex Pvt. Ltd. v. Additional Director General, Directorate of Revenue Intelligence, Chennai 2010 (1) ALD 40 (DB); M/s Vasavi Business Combines v. Commissioner of Customs Judgment of A.P.H.C. D.B in W.P. No. 16170 of 2010 dated 28.7.2010; M/s Jasper Industries Pvt. Ltd. v.

Commercial (CT), (Audit), Hyderabad Judgment of A.P.H.C.D.B. in W.P. No. 18725 of 2010 dated 27.8.2010) A show-cause notice does not give rise to any cause of action as it is not an adverse order which affects the rights of a party. It is quite possible that, after considering the reply to the show-cause notice, the authority concerned may drop the proceedings and/or hold that the allegations are not established. A show-cause notice does not infringe the rights of anyone. It is only when a final order, adversely affecting him, is passed that the said person can be said to have any grievance. (Union of India v. Kunisetty Satyanarayana (2007)1 SCJ 102; Saravani Impex Pvt. Ltd. 2010 (1) ALD 40 .

2. When a show-cause notice is issued under a statutory provision calling upon a person to show-cause he must, ordinarily, place his case before the authority by showing cause. The purpose of issuing a show-cause notice is to afford an opportunity of hearing to the person concerned, and Courts should be reluctant to interfere at that stage as it would be premature. State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, ; M/s Vasavi Business Combines Judgment of A.P.H.C. D.B in W.P.No.16170 of 2010 dated 28.7.2010; M/s Jasper Industries Pvt. Ltd. Judgment of A.P.H.C.D.B. in W.P.No.18725 of 2010 dated 27.8.2010). The appropriate course for the recipient is to reply to the show-cause notice enabling the authorities to record their findings and then, if necessary, the matter can be carried in appeal to the Tribunal and, thereafter, to this Court. Union of India (UOI) Vs. Bajaj Tempo Limited and Others, ; M/s Vasavi Business Combines Judgment of A.P.H.C. D.B in W.P.No.16170 of 2010 dated 28.7.2010; M/s Jasper Industries Pvt. Ltd. Judgment of A.P.H.C.D.B. in W.P.No.18725 of 2010 dated 27.8.2010). Interference would be justified only when the notice is ex-facie a "nullity" or non-est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into the facts, or totally "without jurisdiction" in the traditional sense of that expression i.e., even the commencement or initiation of the proceedings on the face of it, and without anything more, is totally unauthorised. In all other cases, it is only appropriate that the party shows cause before the authority concerned and takes up the objection regarding jurisdiction therein. Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, ; The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, ; Divisional Forests Officers and Others Vs. M. Ramalinga Reddy, ; Saravani Impex Pvt. Ltd. 2010(1) ALD 40 (DB)). Whether the show cause notice was founded on any legal premise is a jurisdictional issue which can even be urged by the recipient in his reply to the notice, and such an issue can also be initially adjudicated by the authority, issuing the very notice, before the aggrieved can approach the Court. The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, ; Divisional Forests Officers and Others Vs. M. Ramalinga Reddy, ; Saravani Impex Pvt. Ltd. 20 10 (1) ALD 40 ; M/s Vasavi Business Combines Judgment of A.P.H.C. D.B in W.P.No.16170 of 2010 dated 28.7.2010; M/s Jasper Industries Pvt. Ltd. Judgment of A.P.H.C.D.B. in W.P.No.18725 of 2010 dated 27.8.2010). Abstinence from interference at the stage of issuance of the show-cause notice, in order to

relegate parties to the proceedings before the authorities concerned, is the normal rule. However the said rule is not without exception. Where a show-cause notice is issued either without jurisdiction, or is an abuse of process of law, the Writ Court would not hesitate to interfere even at the stage of issuance of the show-cause notice. (Union of India v. VICO Laboratories (2007)13 SCC 270). The High Court has the power to issue, in a fit case, an order prohibiting an authority from acting without jurisdiction. Where such an action of the authority, acting without jurisdiction, subjects or is likely to subject a person to lengthy proceedings, and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. The existence of an alternative remedy is not always a sufficient reason for refusing a party relief by a Writ or Order prohibiting an authority, acting without jurisdiction, from continuing such action. Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, . Where the threat of prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for injury to be caused to him before seeking the Court's protection. If, however, the authority has the power in law to issue the show cause notice it would not be open to the person, asked to show cause, to approach this Court under Article 226 of the Constitution at the stage of notice. Chief of Army Staff and Others Vs. Major Dharam Pal Kukrety, ; Saravani Impex Pvt. Ltd. 2010(1) ALD 40 (DB)).

3. The petitioner's factory, located in Survey No. 198, Gagillapur, Ranga Reddy district of Andhra Pradesh, is registered under the Central Excise Act. The petitioner manufactures special type of fire resistant doors against specific orders placed on them by various Indian and International corporate clients. In this Writ Petition, the petitioner questions the proceedings, in O.R. No. 29/2010-Adjn. (Commr.) dated 07.04.2010, whereby they were called upon to show cause, within thirty days, why the doors/door frames etc manufactured by them, along with their essential/integral parts i.e., hardware items, should not be treated as pre-fabricated housing material classified under Chapter Sub-Heading No. 94060091 of the Central Excise Tariff Act, 1985; the steel toilet product should not be classified under Chapter Sub-Heading No. 94060099; Rs.14,54,66,228/-, (including Education Cess and Secondary and Higher Education Cess), being duty payable on hardware items valued at Rs. 103,27,89,375/-, (which are essential/integral parts of the doors/door frames etc., supplied directly from their unregistered premises during the period March, 2005 to February, 2010), should not be demanded from the petitioner under the proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000; interest, at the applicable rates, on the duty should not be demanded u/s 11AB of the Central Excise Act, 1944; penalty, equal to the duty demanded, should not be imposed on them u/s 11AC of the Central Excise Act, 1944 for suppression of facts that resulted in short-payment of duty; penalty, under Rule 25(d) of the Central Excise Rules, 2002, should not be imposed on them for contravention of the Rules; and why the impugned goods should not be confiscated in terms of

the said Rule. The Managing Director of the Petitioner Company was also called upon to show cause why penalty should not be imposed on him under Rule 26 of the Central Excise Rules, 2002. The Petitioner Company and its Managing Director were asked to produce evidence in support of their defence; and to specify in their reply whether they wished to be heard in person by the adjudicating authority.

4. Sri S.R. Ashok, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the taxable event in respect of excise duty is manufacture; the expression "manufacture" means bringing into existence a new article having a distinctive name, character or use; excise duty is payable when the goods are cleared from the factory; any subsequent event, after the sale, has no bearing on excise duty; the duty chargeable on excisable goods is with reference to their value at the time of clearance from the factory; the classification list, giving details of the goods, was filed in the year 1995 which was duly verified and approved by the Excise department; the petitioner has been filing returns and paying duty under the said classification for the last fifteen years; in addition to manufacture of steel doors, the petitioner also carries on business of trading in hardware items such as locks, hinges, tower bolts, door closures, glasses etc., for the doors; they also undertake service of fixing the hardware to the door, and installing them at the site of the customer; these trading and service activities do not amount to manufacture; the petitioner does not manufacture locks, hinges or tower bolts; they are purchased by the petitioner and sold to customers for which sales tax/VAT is paid; similarly, for the service activity of fixing the hardware on the door, the petitioner is paying service tax; this activity of trading and rendering service is being carried on by the petitioner for the past fifteen years which are reflected in their audited accounts and annual reports; the petitioner enters into three agreements with their customers (a) for manufacture and supply of doors, (b) supply of bought-out hardware items, (c) installation of doors etc; they are not engaged in the manufacture of pre-fabricated housing material; they are exclusively engaged in the manufacture of steel doors, frames and nothing else; the sale of door is an independent activity when compared with the sale of hardware items; goods, not manufactured by the petitioner, cannot be assessed to excise duty; procurement of hardware items by the customers, from the petitioner, is purely optional and at their sole discretion; in many cases doors have been supplied without any hardware items; merely by affixing the hardware items to the door, and installing the door in the building, does not convert a door into a new item which is the sine qua non for levy of excise duty; the bought-out hardware items have never been brought into the petitioner's factory and no CENVAT credit, on the duty paid on such hardware, has ever been taken; the department has pre-judged the issue and the proceedings before the respondent is an empty formality; the order of the Commissioner suffers from non-application of mind; inspite of the legal position being set out in the reply, and representations submitted by them, the Commissioner has issued the impugned proceedings without taking into consideration either the petitioner's reply or

their representation; and the impugned proceedings are without jurisdiction and are liable to be set aside.

5. On the other hand, Sri A. Rajasekhar Reddy, Learned Senior Standing Counsel for Central Excise & Customs, would submit that the petitioner has an effective remedy of filing his explanation to the show cause notice raising all grounds which are available to them; the question, whether the commodity is to be classified under one head or the other attracting higher or lower duty, is to be decided in the facts arising in each case; after introduction of the new 8-digit tariff heading from 28.2.2005 the scope of Chapter Heading 9406 has been widened by providing separate sub-headings for pre-fabricated housing material and residuary entries; the petitioner's product, which was earlier classified under Chapter Heading 73083000, is now more appropriately classifiable under Chapter Heading 94060091; the different types of doors and products manufactured by the petitioner must be linked/fixed/attached with the said hardware items to make it a complete door/partition for the purpose of general doors, fire doors etc; in order to fix/attach the hardware items certain apertures/perforations/punching are made in the manufactured items, at the factory itself, as per designs/technical specifications; this activity confirms that the hardware items form an integral part of the manufactured items; these hardware items are also to be assessed to excise duty; the hardware items, supplied separately by the petitioner from their godown, are integral parts of the doors without which the door is not a complete article; its value had to be added for the purpose of payment of excise duty; the petitioner paid duty only on the value of ss doors/frames supplied from their manufacturing premises, keeping aside the value of hardware items supplied from their godown against separate trading invoices; establishment of a separate godown for transactions relating to hardware items has been done only to avoid value addition of the finished products though they are tailor made with the specifications/ designs given/ordered by the customers; the value of hardware items must be added to the assessable value of the steel doors; the petitioner would be entitled to cenvat credit on the duty paid on the hardware items; they are liable to pay excise duty and sales tax/VAT on the value added portion of the steel doors to the extent of the hardware items inclusive of their trading profit; they have merely been issued a show cause notice and would have the opportunity of representing their case in writing, as well as for a personal hearing, before the adjudicating authority; they would also have an opportunity of invoking the appellate remedy, if need be; the department has not prejudged the issue, and no order has been passed against the petitioner; the impugned show cause notice can neither be said to be without jurisdiction nor ultra-vires; and the petitioner should be relegated to file their reply to the show cause notice.

6. It is wholly unnecessary for this Court to examine the contentions urged by the Learned Senior Counsel, except those grounds on the basis of which the impugned show cause notice is said to suffer from inherent lack of jurisdiction, for the other grounds can as well be agitated, after submitting their reply to the

show cause notice, before the adjudicating authority. The show cause notice is said to be without jurisdiction in as much as the bought-out items, which are proposed to be subjected to excise duty, do not form part of the petitioner's manufacturing process; they neither entered the petitioner's factory premises nor were they cleared from their factory; and they were supplied directly to the customers from the petitioner's godown located at a distance far away from the factory premises. The jurisdiction of the High Court, under Article 226 of the Constitution, should not be permitted to be invoked in order to challenge a show-cause notice unless, accepting the facts stated therein to be correct, the show-cause notice is, *ex facie*, without jurisdiction (*State of U. P. v. Anil Kumar Ramesh Chandra Glass Works* (2005) 11 SCC 451). Mere assertion by the petitioner that a notice is without jurisdiction would not suffice. It should, *prima facie*, be established to be so. Where factual adjudication is necessary interference is, ordinarily, ruled out. (*VICCO Laboratories* (2007)13 SCC 270; *Saravani Impex Pvt. Ltd.* 2010 (1) ALD 40 . It is, therefore, necessary to briefly refer to the contents of the show cause notice. The show cause notice dated 07.04.2010 records that a study of the manufacturing process of the petitioner revealed that the different types of doors and products manufactured by the petitioner must necessarily be linked/fixed/attached with the hardware items to make it a complete door/partition for the purpose of general doors, stainless steel doors etc; the hardware items, supplied separately by the assessee from their godown, form an integral part of the doors; without such hardware items the door is not a complete article; the value of hardware has to be added for the purposes of payment of excise duty; the assessee was paying duty only on the value of s.s. doors/frames supplied from the manufacturing premises, keeping aside the value of hardware items supplied from their godown against separate trading invoices; the transactions of all the premises of the assessee, i.e., of their Registered office, the manufacturing premises, and of the un-registered godown, (declared as "stores" in the commercial invoices), should be treated as one entity; the assessee was preparing a single balance sheet for the business carried on in all the three premises; the hardware items were procured exclusively for supply along with the doors; such items were not independently sold except for replacement; the petitioner was marketing the doors in a fully finished condition together with all hardware items, etc; they were giving a single quotation to the respective buyers for supply of doors, hardware items, and for installation; they were, however, obtaining separate purchase orders for supply of doors, hardware items and erection and supply of hardware items on commercial invoices so as to evade excise duty on clearance of the complete doors/door frames etc; in the ER-1s, they furnished details of different types of doors/frames and partitions; the value given therein was only of the semi-finished portion without adding the value of the respective hardware items; the value of the hardware items supplied with the doors, as per the financial accounts/balance sheets from 2005-06 to February, 2010 worked out to Rs. 103,27,89,375/-; the value of goods supplied from the unregistered godown, i.e., the hardware items against commercial invoices had to be added to the value of the unfinished/semi-finished goods

cleared from the factory against central excise invoices; duty was required to be collected on the value portion of the hardware items cleared from the unregistered godown; the assessee was in the knowledge of mis-classification and under-valuation of excisable goods; they had also failed to declare the existence of a store/godown where essential/integral parts of doors are stocked/stored; and the purchase orders were "composite" in nature i.e., for supply of manufactured items along with the hardware items.

7. It is not in dispute that the petitioner's godown, from which the bought-out items were supplied directly to the customers is located far away from the petitioner's factory premises; and these bought-out items neither entered the petitioner's factory premises nor were they cleared therefrom. The case of the respondents, in short, is that these bought-out items form an integral part of the manufactured items i.e., stainless steel and other doors, and excise duty is liable to be paid thereupon. In order to relegate the petitioner to the remedy of filing a reply to the show cause notice this Court must be satisfied, prima facie, that the contentions urged on behalf of the department, is not without merit; and the bought-out items, which allegedly form an integral part of the manufactured items, are also liable to be subjected to excise duty even though such bought-out items never entered the petitioner's factory premises; they were not manufactured by the petitioner; and were not cleared from the factory.

8. In Commissioner of Central Excise, Delhi Vs. Frick India Ltd. and Another, the department alleged, in the show cause notice, that the assessee had evaded payment of duty, on the full value of the compressors manufactured and cleared by them, by separately invoicing bought-out items. The factory of the assessee was in Faridabad where the items, manufactured and cleared, consisted of compressors, fly-wheels, safety valves, and filters ("manufactured items"); whereas the bought-out items supplied from their trading office in New Delhi, consisted of V. belts, pulleys, belt guards, angle valves and other items ("bought-out items"). According to the show cause notice, the assessee had knowingly cleared manufactured items and bought-out items separately; the value of the bought-out items and manufactured items were includible in the assessable value of the compressor as, without the said items, the compressor was non-functional; the assessee had deliberately undervalued the compressor, and overvalued the accessories/parts which were supplied separately to the buyers; there was a difference between the cost price and the declared assessable value of the compressor and, in the circumstances, the assessee became liable to pay the differential duty on the accessories which stood worked out on the basis of includibility of the value of bought-out items + duty on the parts of accessories manufactured and cleared by the assessee.

According to the department the said accessories were, in effect, parts of the compressor as the compressor was non-functional without the said items. It is in this factual background that the Supreme Court observed:

...Chargeability from excise duty is on the manufacture of excisable goods. The

assessee has to pay duty on the manufacture of such goods. With chargeability, question of quantification of duty comes in. Classification decides the applicable rate. It is followed by valuation i.e. value on which the rate is to be applied. The concept of "classification" is, therefore, different from the concept of "valuation". In the present matter there is confusion in application of the aforesaid two concepts by the Commissioner. In our view, the thrust of the show cause notice is towards undervaluation and not classification....

...As stated above, the concept of "classification" is different from the concept of "valuation". In the present matter, along with the "stand-alone" compressor, the assessee has supplied fly wheel, safety valve and filter to its buyers. They have also supplied bought-out items like V. belt, motor, pulley, belt guard, gauge, gauge board, angle valve, M. S. male flange, C. A. F. Gasket, set of tools, bolts and nuts, etc. to their buyers, as a package. Therefore, on the question of valuation, the Commissioner should have examined the pricing aspect of the entire package supplied by the assessee to its buyers. For example, when a ceiling fan is sold to the buyer, apart from the parts of the ceiling fan, there may be a remote which is a part of the package supplied to the buyer. That remote is fan-specific in matter of valuation since the remote is an additional feature provided with the ceiling fan its value has also to be taken into account. This is because the remote which operates the fan may be an accessory but still it makes value addition and, therefore, its value is liable to be included in the assessable value of the ceiling fan. These aspects have not been considered by the Commissioner, therefore, in addition to the question remitted by CEGAT to the Commissioner we also direct the Commissioner to de novo consider the question of valuation....

(emphasis supplied)

9. It is evident, from the judgment of the Supreme Court in Commissioner of Central Excise, Delhi Vs. Frick India Ltd. and Another, that bought-out items, even if they are not manufactured by the petitioner and are supplied from their godown located at a far distance from their factory, are also liable to excise duty if they form an integral part of the manufactured items. On the premise, that the bought-out items form an integral part of the products manufactured by the petitioner, the value of the bought-out items are liable to be included in the assessable value of the manufactured items for the purpose of determining the excise duty payable. The impugned show cause notice cannot, therefore, be said to be non-est, a nullity or as wholly without jurisdiction. We make it clear that we have not examined whether, in fact, these bought out items form an integral part of the manufactured items as these are questions of fact which the adjudicating authority would first examine on a reply being submitted by the petitioner to the show cause notice. Sri S.R. Ashok, Learned Senior Counsel, would submit that the judgment of the Supreme Court in Commissioner of Central Excise, Delhi Vs. Frick India Ltd. and Another, runs contrary to several judgments of larger benches of the Supreme Court. We do not propose to examine this contention

either as the prima-facie opinion of the adjudicating authority, when examined in the light of the law laid down in Commissioner of Central Excise, Delhi Vs. Frick India Ltd. and Another, is certainly a possible view. In such circumstances the show cause notice cannot be said to suffer from an inherent lack of jurisdiction.

Sri S.R. Ashok, Learned Senior Counsel, would submit that that the respondents had, on 16.8.2004, accepted that the value of bought-out items were excludable from the value of manufactured items, and it was not open to them to now contend that they form an integral part of the manufactured items. On the other hand, Sri A. Rajasekhar Reddy, Learned Senior Standing Counsel, would submit that, after 28.2.2005, when a new eight digit tariff heading was introduced, and on further investigation, the authorities were of the view that excise duty is leviable on the hardware items. The matter relating to commodity classification, whether it falls under one heading or the other or attracts higher or lower duty, has to be decided on the facts arising in each case. Even though a decision may have been taken earlier, the matter may have to be re-examined on further investigation, on discovery of new facts or where the law has changed. It is not proper for the High Court to interfere in such matters at the stage of a show cause notice. Commissioner of Customs and Central Excise and Others Vs. Charminar Nonwovens Ltd., M/s Vasavi Business Combines Judgment of A.P.H.C. D.B in W.P.No.16170 of 2010 dated 28.7.2010)

10. Sri S.R. Ashok, Learned Senior Counsel, would further submit that, while demanding duty beyond one year, the onus is on the department to prove that non-payment or short payment of duty was due to fraud, collusion, willful mis-statement or suppression of facts; the notice does not give any evidence in support of such allegations; on the contrary, the facts were known to the department through audits and balance sheets submitted every year to them; in the year 2003 the petitioner's explanation, regarding inclusion of hardware items in the value of doors, was called for to which they had submitted a detailed reply; the respondents had accepted that the value of bought-out hardware items were not includable in the value of the doors; the decision was communicated to the petitioner by the respondents vide their letter dated 16.08.2004; the petitioner has not suppressed even a single fact; the audit personnel of the department visit the petitioner's office each year, and annexures A and B are submitted to them; copies thereof would show that the petitioner had furnished particulars of their manufacturing and trading activity separately; the petitioner has also submitted statutory forms like Form - I giving details of the doors to be manufactured; and the respondents, having admitted that the petitioner does not manufacture locks, hinges, tower bolts etc., cannot allege that the petitioner has suppressed any fact.

11. While the submission of the Learned Senior Counsel cannot be said to be without merit, we do not propose to examine them at this stage since all these contentions can as well be urged in the reply to the show cause notice. At the stage of a show-cause notice, this Court is required to presume that the

allegations in the show cause notice are true. The show cause notice dated 7.4.2010 records that the petitioner had suppressed the value of hardware items; and they were not included in the assessable value of the excisable goods while submitting the monthly ER-1 returns; the assessee had indulged in improper assessment of excisable goods by not including the value of essential parts/accessories with an intention to evade duty payment on the excisable goods cleared by them; the proviso to Section 11A(1) of the Central Excise Act, 1944, for the extended period, was invocable for demand of duty not paid by them on these goods; the assessee was resorting to under-valuation of goods by setting up an un-registered godown, and supplying (transacting) hardware items by misclassification and suppression of value with an intent to evade the duty payable; the assessee had intentionally suppressed the fact of clearance of the said hardware items from the unregistered premises; the suppression of actual/total value of the excisable goods is with the malafide intention of evading duty on the value of the goods cleared in the guise of bought-out items which are essential/integral parts of the goods manufactured by the assessee, and attracts the provisions of Rule 8 of the Central Excise Rules 2002, read with the proviso to Section 11A(1) of the Central Excise Act, 1944; the act of not including the value of goods i.e, the hardware items, cleared from a separate un-registered godown/premises, had resulted in short payment of duty, and the assessee was liable for payment of duty so short paid, along with interest under the proviso to Section 11A(1) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Section 11AB of the Central Excise Act, 1944; and the assessee had contravened Rules 4, 6, 8, 10 and 12 of the Central Excise Rules, 2002. Accepting the aforesaid contents of the show-cause notice as true, it cannot be said that invocation of the extended period, under the proviso to Section 11A, is without jurisdiction. In any event the contentions urged before us in this regard can as well be raised by the petitioner before the adjudicating authority, after they submit their reply to the show-cause notice.

12. The adjudicating authority shall, without being influenced by the observations made hereinabove on merits, consider the matter, duly dealing with all the contentions urged, both in the reply, if any, submitted by the petitioner within three weeks from today and in the course of oral hearing, and, thereafter, pass orders in accordance with law.

13. Subject to the directions given hereinabove, the Writ Petition fails and is, accordingly, dismissed. However, in the circumstances, without costs.