(2011) 04 MAD CK 0426

In the Madras High Court

Case No : Writ Petition (MD) No''s. 8123 and 8135 of 2010 and M.P. (MD) No''s. 1, 2, 2 and 3 of 2010

Sterlite Industries (India) Limited — APPELLANT

Vs

The Assistant Commissioner of Central Excise — RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

CENVAT (Credit) Rules, 2004 — Rule 4(5), 4(6)
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 142(2A), 269

Citation : (2011) 04 MAD CK 0426

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M. Venkataraman and S.P. Maharajan, for the Appellant; B. Vijay Karthikeyan Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.S.Ramanathan, J.—In the writ petition W.P.(MD) No. 8123 of 2010, the Petitioner challenges the notice, dated 08.06.2010 issued by the Respondent directing the Petitioner to reverse the CENVAT Credit availed by them to an extent of Rs. 315,91,42,459/-and also to pay interest of Rs. 8,78,51,937/- as per the work sheet attached to it.

2. The Petitioner challenges the aforesaid notice on the ground that the Respondent without following the principles of natural justice and without appreciating that the Petitioner was given permission under Rule 4(6) of the CENVAT Credit Rules 2004 proceeded on the basis that there is violation of Rule 4(5)(a) and the Petitioner has not received the challans within the period of 180 days from the date of despatch of the finished products from their Unit at Chinchpada and erroneously, passed the order directing the Petitioner to reverse the entry in respect of CENVAT Credit availed by them.

3. The contention of the Respondent, as seen from the counter affidavit, is that

the writ petition is not maintainable, as there is a statutory remedy, which is efficacious one and therefore, the Petitioner cannot challenge the notice without exhausting the statutory remedies.

4. It is further contended by the learned Counsel for the Respondent that a reading of Rule 4(5)(a) and 4(6) of the CENVAT Credit Rules, 2004, would make it clear that there is No. necessity to issue show cause notice and having regard to the admitted facts, the order was passed, as the Petitioner failed to prove that they received the challans within a period of 180 days from the date of despatch from their Unit at Chinchpada and therefore, the Respondent has rightly directed the Petitioner to reverse the entry in respect of the CENVAT Credit already availed by them and directed them to pay the said amount along with interest.

5. Besides these contentions, both the parties were at issues whether Rule 4(5)(a) and Rule 4(6) of the CENVAT Credit Rules, are mutually exclusive as contended by the Petitioner or Rule 4(6) is only a relaxation of Rule 4(5)(a) as contended by the Respondent.

6. According to me, I am not going to decide the contentions raised by the parties with respect to Rule 4(5)(a) and 4(6), whether there are mutually exclusive or Rule 4(6) is only a relaxation, for the reason that if I hold that the Petitioner has to avail the statutory remedies and they cannot file a writ, accepting the contentions of the Respondent, the Petitioner has to agitate their claim only before the forum provided under Act.

7. On the other hand, if I hold that the notice issued by the Respondent is void as they have not followed the principles of natural justice while issuing the show cause notice, in that event, I will have to set aside the notice and remanded the matter to the authorities under the Act, for following the principles of natural justice and to issue further orders. Therefore, in any event, the matter has to be agitated and decided only by the authorities provided under the Act and therefore, I am not deciding the issue whether Rule 4(5)(a) and 4(6) are mutually exclusive or not?

8. To appreciate the contention of both parties, the following facts are necessary. The Petitioner''s factory is at Tuticorin and it imports Copper Concentrate and after adding some raw-materials, the Copper Concentrate are converted into Copper Anodes and the Copper Anodes are despatched to the Petitioner''s other Unit situated at Chinchpada on job work basis for conversion into Copper Cathodes, rods, etc. For sending Copper Anodes to Petitioner''s own unit at Chinchpada and Silvassa, the Petitioner obtained permission under Rule 4(6) of the CENVAT Credit Rules and one of the condition of the said permission was that the Petitioner should get back the job work challans from the job workers within 180 days and copies of such challans should be produced before the jurisdictional Range Office on fortnightly basis. As the Petitioner failed to comply with the said condition, the Range Officer reported the matter to the Central Exercise, Tuticorin and the Divisional Central Excise Officer, visited the Petitioner''s factory on

08.04.2010 and found that the Petitioner was not in possession of the challans pertaining to the period from 01.03.2009 to 30.09.2009.

9. According to the Respondent, the challans pertaining to the above period were seized at the Madurai Railway Station on 09.04.2010 and therefore, the Petitioner has failed to comply with the vital condition viz., not in possession of job work challans from job workers within 180 days, the impugned notice was issued directing the Petitioners to reverse the amount of Rs. 315,91,42,459/- along with interest.

10. In the impugned order also, it was stated clearly that the deadline of 180 days for the return of the challans sent on 01.03.2009 ended on 28.08.2009 and the deadline for the return of the challans sent on 30.09.2009 ended on 29.03.2010 and the challans pertaining to the above period were seized only on 09.04.2010, which is beyond the period 180 days and therefore, the Petitioner was directed to reverse the above said amount.

11. As stated above, we will have to see whether the notice issued by the Respondent directing the Petitioner to reverse the amount is liable to be set aside on the ground of violation of principles of natural justice or not?

12. Mr. M.Vekataraman, the learned Senior Counsel appearing for the Petitioner submitted that the impugned notice is an ex-parte order passed behind the back of the Petitioner, without giving any opportunity to the Petitioner and the order has adverse civil consequences for the parties affected and therefore, before passing such orders, opportunity ought to have been given to the Petitioner to show cause and admittedly, No. such opportunity was given and therefore, the order is liable to be set aside.

13. The learned Senior Standing Counsel appearing for the Respondent, Mr. B.Vijay Karthikeyan, submitted that there is No. question of issuing show cause notice while passing the impugned order and Rule 4(5)(a) and Rule 4(6) do not contemplate the issuance of show cause notice before passing an order and having regard to the admitted facts that on 08.04.2010, the officials visited the Petitioner''s factory and enquired the Vice President,(IDT), Varadharajan and he has stated that the challans were received within the period of 180 days, but did not produce those challans and those challans were seized on 09.04.2010 at the Madurai Railway Station and thereafter, a further statement was recorded from S.Varadharajan, Vice President (IDT) and he also admitted that the challans were not available in the factory and when it was admitted by Varadharajan, Vice President (IDT) that they have not received the challans within the period of 180 days and the challans were seized only after the period of 180 days, the Petitioner is liable to reverse the entry and therefore, No. prejudice is caused to the Petitioner.

14. The main submission of the learned Senior Standing Counsel appearing for the Respondent is that there is No. necessity to issue the show cause notice, while passing an order directing the Petitioner to reverse the entry for the non-

receipt of the challans within the period of 180 days.

15. On the other hand, the learned Senior Counsel appearing for the Petitioner, Mr. M.Venkataraman, submitted that even though Rule 4(5)(a) and 4(6) are silent about the issuance of show cause, before passing an order, the principles of natural justice, can be read into those provisions when the order has adverse civil consequences for the parties affected.

16. The learned Senior Standing Counsel also relied upon the judgment reported in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, and H.L. Trehan and Others Vs. Union of India (UOI) and Others, in support of his contention.

17. The learned Senior Standing Counsel appearing for the Respondent, Mr. B. Vijaya Karthikeyan, has relied upon my judgment rendered in W.P.(MD) No. 6090 of 2009 between N.Narayanan v. The Securities and Exchange Board of India (SEBI) and Ors. and wherein I have held that when the alternative remedy is available, this Court has No. jurisdiction to entertain the writ petition and therefore, contended that the writ petition is liable to be dismissed on that ground that the Petitioner has to exhaust their remedy available under the statute.

18. In the judgment reported in (2005) 6 SCC 499, in the case of Stateof H.P. and Ors. v. Gujarat Ambuja Cement Ltd and another, the Honourable Supreme Court discussed the exceptions to the doctrine of exhaustion of statutory remedies as follows:

The power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution.

18. The Constitution Benches of this Court in K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., ; Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, ; Union of India (UOI) Vs. T.R. Varma, ; The State of Uttar Pradesh Vs. Mohammad Nooh, and K.S. Venkataraman and Co. Vs. State of Madras, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

19.Another Constitution Bench of this Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil ourt or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, ; Municipal Council, Khurai and Another Vs. Kamal Kumar and Another, ; Siliguri Municipality and Others Vs. Amalendu Das and Others, ; S.T. Muthusami Vs. K. Natarajan and Others, ; Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, ; Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, ; A. Venkatasubbiah Naidu Vs. S. Challappan and Others, ; L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others, ; Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, ; Pratap Singh Vs. State of Haryana and Others and Shri Bhajan Lal and Others, and GKN Driveshafts (India) Ltd. v. ITO [(2003) 1 SCC 72].

20.In Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

21.In Veerappa Pillai Vs. Raman and Raman Ltd. and Others, ; Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ; Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others, ; Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others, ; C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, ; Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, ; H. B. Gandhi v. Gopi Nath and Sons; Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ; Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ; Sheela Devi Vs. Jaspal Singh, and Punjab National Bank Vs. O.C. Krishnan and Others, , this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

22.If, as was noted in Ram and Shyam Company Vs. State of Haryana and Others, the appeal is from "Caesar to Caesar''s wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court''s reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd., and State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd., . That being the position, we do not consider the High Court''s judgment to be vulnerable on the ground that alternative remedy was not availed. There are two wellrecognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

19. In the judgment reported in M/s. Madan and Co. Vs. Wazir Jaivir Chand, , the Honourable Supreme Court has held that when the adverse action involved civil consequences, the principles of natural justice has to be followed. The same principle is also reiterated in the judgment reported in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, .

20. In the judgment reported in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, , the Honourable Supreme Court dealt with Section 142(2-A) of the Income Tax Act and held that even though, Section 142(2-A) did not contemplate, giving an opportunity before passing any order as the power exercised under 142(2-A) leads to serious civil consequences, the requirement of observance of principles of natural justice is to be read into the said provision, even in the absence of express provision for affording an opportunity of pre-decisional hearing to an Assessee.

21. Further, in the judgment reported in STATE OF TRIPURA v. MANORANJAN CHAKRABORTY AND OTHERS, (2001) 10 SCC 740 . the Hon''ble Supreme Court has held that if gross injustice is done and it can be shown that for good reason the Court should interfere, then notwithstanding the alternative remedy which may be available by way of appeal u/s 20 or revision u/s 21, the writ Court can in an appropriate case exercise its jurisdiction to do substantive justice.

22. In the judgment reported in C.B. Gautam Vs. Union of India and Others, the Hon''ble Supreme Court while interpreting the provision of Section 269-UD of the Income Tax Act, has held that even though opportunity of showing cause is not stipulated in the statutes, the same may be afforded by way of compliance with minimal requirement of natural justice rule where such action has adverse civil consequences such as an imputation of tax evasion.

23. Bearing these principles in mind, we will have to see whether the impugned order is liable to be quashed on the ground of violation of principles of natural justice.

24. The main contention of the Respondent for issuing the impugned notice was that on 08.04.2010, the officials of the Respondent visited the factory of the Petitioner at Tuticorin to verify whether the job work challans were received within 180 days and it was found that job of challans pertaining to the despatches made during the period of from 01.03.2009 to 30.09.2009 were not available and though it was accepted by the Petitioner that they have not received the challans within 180 days and the challans might have been misplaced in their factory, the same challans were seized only on 09.04.2010 at the Madurai Railway Station and therefore, it was proved that the challans were not received within the period of 180 days and hence, the Petitioner is liable to reverse the entry in respect of CENVAT Credit availed earlier.

25. The specific contention of the Petitioner was that they were granted permission under Rule 4(6) of the CENVAT Credit Rules and as per the permission granted under Rule 4(6), the Petitioner was permitted to remove the finished goods from their Unit at Chinchpada and the Petitioner were permitted to pay the duty to the Tuticorin factory for despatches and as per permission granted, they were permitted to maintain the details of Part II and Part III of the challans through a computer net-work connection between Tuticorin and Silvassa and they were advised to file hard copies serially numbered, generated on a daily basis kept in a file for inspection of the excise officials, whenever required and as per the conditions, they were maintaining the records and documents on-line and the Petitioner has to file valid documents to substantiate their case and therefore, submitted had opportunity been given to them, they would have proved that there was No. violation of permission granted to them and they were maintaining the challans as per the permission granted and without giving them opportunity, the Respondent on the basis of the alleged seizure of challans on 09.04.2010 at the Madurai Railway Station presumed that the Petitioner''s Company have not received the challans within the period of 180 days and passed the impugned order.

26. According to me, even though Rule 4(5)(a) and 4(6) are silent about the issuance of show cause notice, having regard to the facts stated above, the issuance of show cause notice before passing the order can be read into those provisions, before passing any order. As stated supra, the dispute is that the challans were not received within 180 days and therefore, the Petitioner has to reverse the entry in respect of the CENVAT Credit availed earlier and he has to pay back the said CENVAT Credit with interest. It is stated in the impugned notice that during inspection, the challans were not available and it was also stated by the Vice President, (IDT), Mr. Varadharajan, that the challans were received and misplaced in the factory and promised to submit the same before 4.00 p.m. on 09.04.2010 and those challans were seized at the Madurai Railway

station on 09.04.2010. It is stated that the challans were not at all filed in Part II and III and many other challans were not at all signed in Part II and III. Therefore, on the basis of the above findings the order was passed. As per the order, the Petitioner was directed to reverse the entry in respect of CENVAT Credit availed earlier and to pay a sum of Rs. 315,91,42,459/-with interest. Even assuming that the challans were not available in the factory, during the inspection on 08.04.2010 and those challans were seized on 09.04.2010 at the Madurai Railway Station, according to the Respondent, having regard to the fact that by passing the order, directing the Petitioner to reverse the entry and pay a sum of Rs. 315,91,42,459/- as stated above would definitely involve civil consequences and therefore, as per the judgment of the Hon''ble Supreme Court referred to above, the Respondent ought to have given an opportunity to show cause why the CENVAT Credit shall not be reversed.

27. Further, a reading of Rule 4(5)(a) and 4(6) would also make it clear that the non-receipt of challans within 180 days will not dis-entitle the Petitioner to avail the CENVAT Credit and it has been made clear that even after the challans were received after 180 days, the manufacturer can take the CENVAT Credit again when inputs and capital goods are received back in their factory or in the premises of the provider of output service and they have to pay interest for the period. Therefore, there is No. need to pass such an order on the assumption that the challans were not received within 180 days and if the Petitioner is able to prove that he has received the challans within 180 days, he is entitled to avail the credit and even assuming that the challans were not received within 180 days he has to pay the interest or even after the receipt of the challans after 180 days he is entitled to take CENVAT Credit.

28. Considering all these aspects, I am of the opinion that the Respondent ought to have been given an opportunity to the Petitioner to show cause why the entry should not be reversed regarding the CENVAT Credit already availed by them and without giving an opportunity, the Respondent has passed the impugned order and therefore, there is violation of principle of natural justice and the order is liable to be set aside.

29. It is submitted by the learned Senior Counsel appearing for the Petitioner that the Respondent pre-determined the matter while passing the impugned order and therefore, as per the judgment reported in Raghbir Singh and Others Vs. State of Haryana, , the writ is maintainable and the impugned order is liable to be set aside.

30. The learned Senior Counsel further submitted that the order, which is impugned in W.P.(MD) No. 8135 of 2010 passed by the first Respondent, also would prove that there was pre-determination of issue and therefore, the impugned order is liable to be set aside.

31. I am not able to accept the argument of the learned Senior Counsel appearing for the Petitioner that a perusal of the order impugned in the writ

petition, does not show that that Respondent has pre-determined the issue. As stated supra, in the impugned order, the Respondent has directed the Petitioner to reverse the entry on the ground that the challans were not received within 180 days, there is No. question of pre-determination and according to the Respondent, having regard to the fact that the Petitioner has not produced the challans during inspection on 08.04.2010 and the challans were seized only on 09.04.2010 at the Madurai Railway Station, they came to the conclusion that there is violation of Rule 4(5)(a). According to me, the reasoning of the Respondent cannot be faulted and if the Petitioner is able to prove that they have received the challans within the period of 180 days or as per the permission granted under Rule 4(6) of the CENVAT Credit, they were maintaining the records, the Respondent is bound to pass orders considering the merits of the case. As the dispute involves the verification of challans received by the Petitioner and the contention of the Petitioner that they were permitted to maintain the challans in the computer as per the permission granted to them, this Court cannot go into those details and they are in the realm of the authorities, and in my opinion, the authorities have not pre-determined the issue and they have only come to the conclusion on the basis that the challans were not received within 180 days and passed the impugned order.

32. Hence, there is No. question of pre-determination of issue by the Respondent and the Respondent without affording opportunity passed the order, which has adverse effect of civil consequence on the Petitioner there is violation of principals of natural justice and on that ground, the impugned order is liable to be set aside and it is set aside.

33. The Respondent is directed to issue show cause notice to the Petitioner and the Petitioner is also entitled to prove his case and the Respondent can decide whether Rule 4(5)(a) and 4(6) are mutually exclusive or not, while deciding the issue after giving sufficient opportunity to the parties concerned.

34. In the writ petition, W.P(MD) No. 8135 of 2010, the Petitioner challenged the communication sent by the 1st Respondent to various Superintendents of Central Excise, as annexed in the list attached to the communication.

35. It is submitted by the learned Senior Counsel appearing for the Petitioner''s Company that pre-determination mind of the 1st Respondent is proved by the communication sent by the 1st Respondent to various Officers and as a result of the communication, various buyers of the Petitioner''s Company were asked to reverse their entries and the 1st Respondent has came to the definite conclusion that there was total violation of CENVAT Rules and the Petitioner''s Company has evaded the customs duty till 2000 Crores and therefore, the communication issued by the 1st Respondent has to be stayed.

36. On the other hand, the learned Senior Standing Counsel appearing for the Respondents submitted that it is not an order passed by the 1st Respondent and it is only an internal communication between the Officials and that cannot be

challenged in the writ petition and in the said communication, the 1st Respondent has only stated his opinion and called for the report from the other Officials about the action taken at their end to update the records and that cannot be challenged.

37. According to me, a perusal of the impugned communication, dated 09.06.2010 would make it clear that it is not an order passed by the 1st Respondent and it is only an internal communication between the officials wherein the 1st Respondent has expressed his opinion on the basis of the records and communicated the same to the other Officials and asked them to report the action taken by them.

38. Further, while dealing with the orders passed by the 1st Respondent, which is impugned in W.P.(MD) No. 8123 of 2010, I have held that there was No. pre-determination of issue by the 1st Respondent and the orders passed by the 1st Respondent, dated 08.06.2010 is invalid as it was passed in violation of principles of natural justice and that order was set aside.

39. Though, the order impugned in W.P.(MD) No. 8135 of 2010 is an internal communication between the Officials, as submitted by the learned Senior Counsel appearing for the Petitioner''s Company, there is every likelihood of action being taken by various officials of Central Excise in various places by misinterpreting the communication, dated 09.06.2010 issued by the 1st Respondent. Having set aside the proceedings, dated 08.06.2010 on the ground of violation of principles of natural justice, the communication, dated 09.06.2010 sent by the 1st Respondent is liable to be stayed, till the disposal of the enquiry to be conducted by the 1st Respondent in respect of the proceedings, dated 08.06.2010 as stated above, though the writ petition in W.P.(MD) No. 8135 of 2010 is not strictly maintainable in law.

40. Hence, having regard to the orders passed in W.P.(MD) No. 8123 of 2010, there shall be an order of stay of the communication, dated 09.06.2010, which is impugned in W.P.(MD) No. 8135 of 2010 in so far as it relates to non-compliance of Rule 4(5)(a) or 4(b) of Cenvt Credit Rules till the disposal of the enquiry directed in the order passed in W.P.(MD) No. 8123 of 2010.

41. Accordingly, W.P.(MD) No. 8135 of 2010 is disposed of with the manner as stated above and W.P.(MD) No. 8123 of 2010 is allowed and the impugned order, dated 08.06.2010 is set aside and the matter is remitted back to the Respondent, for deciding the issue as stated above after giving opportunity to the Petitioner to prove his case.

42. Further, having regard to the apprehension of the learned Senior Counsel for the Petitioner that if the same Officer is directed to consider the reply given by the Petitioner, he may be prejudiced against the Petitioner, in the interest of fair play and justice, the Commissioner of Central Excise, is directed to depute some other Assistant Commissioner of Excise to conduct the enquiry as stated above. Consequently connected Miscellaneous Petitions is closed. No. costs.

