

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 677 OF 2015

Esab India Limited	}	
through its authorised	}	
signatory Shri. B. Mohan-	}	
Vice President (Financial)	}	
having its registered office	}	
at Plot No. 13, 3 rd Main Road,	}	
Industrial Estate,	}	
Ambattoor, Chennai 600 058	}	Petitioner

versus

1. Union of India	}	
represented by Secretary in	}	
the Department of Revenue,	}	
Government of India,	}	
New Delhi	}	
	}	
2. Director of Enforcement,	}	
Department of Revenue,	}	
Ministry of Finance,	}	
Lokmanya Bhavan, Khan	}	
Market, New Delhi	}	
	}	
3. Deputy Director,	}	
Directorate of Enforcement,	}	
Ministry of Finance,	}	
Department of Revenue,	}	
Government of India, 23/24,	}	
2 nd floor, Mittal Chambers,	}	
Nariman Point,	}	
Mumbai - 400 021	}	
	}	
4. Shri Vishal M. Sanap	}	
Deputy Director (purported	}	
adjudicating authority under	}	
Foreign Exchange	}	
Management Act, 1999),	}	
Directorate of Enforcement,	}	
Ministry of Finance,	}	
Department of Revenue,	}	
Government of India, 23/24,	}	

2 nd floor, Mittal Chambers,	}	
Nariman Point,	}	
Mumbai - 400 021	}	
	}	
5. Appellate Tribunal for	}	
Foreign Exchange, 4 th floor,	}	
'B' Wing, Janpath Bhavan,	}	
New Delhi - 110 001	}	
	}	
6. Reserve Bank of India	}	
Exchange Control	}	
Department, Central Office,	}	
Mumbai - 400 001	}	
	}	
7. The Board of Directors,	}	
Reserve Bank of India,	}	
Central Office Building,	}	
Shahid Bhagat Singh Road,	}	
Mumbai - 400 001,	}	
Represented by its Governor	}	
	}	
8. Standard Chartered Bank	}	
Cresenzo C-38/39, G-Block,	}	
3 rd floor, Behind MCA Club,	}	
Bandra Kurla Complex,	}	
Bandra (East),	}	
Mumbai - 400 051	}	Respondents

Mr. Mathews Nedumpara with Ms. Rohini Amin, Ms. Sarika Gohil and Mr. Motwani for the petitioner.

Mr. A. J. Rana-Senior Advocate with Mr. Rui Rodrigues and Mr. D. P. Singh for the respondents.

**CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.**

DATED :- MARCH 21, 2018

(ORAL JUDGMENT) :- (Per S. C. Dharmadhikari, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioner prays that the records pertaining to a show cause notice dated 16th May, 2002, the adjudication orders dated 19th October, 2004 and 29th March, 2014, passed by the fourth respondents (Exhibits 'P-1', 'P-2' and 'P-5') be called for and on a scrutiny thereof, they be declared as *void ab initio*.

2. The argument is that these orders have been passed by an officer *coram non judice*, in gross violation of the principles of natural justice. These orders have been passed without complying with the statutory requirements.

3. Prayer clause (b) is seeking a writ of mandamus or any other appropriate writ, order or direction, directing respondent no. 4 to produce before this court a copy of the purported information from the Reserve Bank of India (RBI) to the effect that the petitioner has failed to utilise the foreign exchange for the purpose for which it was obtained and to give particulars and details of investigation and inquiry conducted by the said respondent, upon the information from the RBI.

4. There are various other prayers in the writ petition, but what is essentially pressed before us is the prayer to issue a writ

of certiorari so as to quash and set aside the show cause notice and the adjudication orders.

5. To such a writ petition filed in this court on 19th June, 2014 and pending since then, a preliminary objection has been raised by Mr. Rana learned senior counsel appearing for the respondents. He would submit that the order under challenge is passed on a show cause notice. This order is capable of being challenged in an appeal before the appellate forum. That appellate forum will provide enough opportunity to the petitioner to make good its case and on all counts, as raised in the instant petition. It is thus an alternate and equally efficacious remedy and hence, the writ petition need not be entertained.

6. The second objection is that the conduct of the petitioner must be borne in mind. Before us is a petition, according to Mr. Rana, raising several contentions and for the first time. This petitioner firstly subjected itself to an adjudication on a show cause notice issued, copy of which is annexed to the petition itself as Exhibit - 'A'. That show cause notice was issued on 16th May, 2002. The adjudication in that show cause notice, which was the initial adjudication, resulted in an order dated 19th October, 2004 levying penalty on the petitioner. That order was challenged in a statutory appeal before the Appellate Tribunal for Foreign

Exchange, New Delhi. Before that appellate body or tribunal, no argument of the nature canvassed now before us has been canvassed. Indeed, the appellant had submitted itself voluntarily to the jurisdiction of the adjudicating authority. The lack of power in the adjudicating authority, legality and validity of the show cause notice are not the contentions raised before the appellate authority/tribunal. The argument was entirely on merits and the grievance is that this argument on merit was overlooked and not considered by the adjudicating authority. This argument was accepted by the tribunal when it delivered its order. The tribunal's order, copy of which is at page 30 of the paper book is dated 1st November, 2007. The tribunal accepting the appeal, proceeded to quash and set aside the initial order of adjudication and directed a de-novo consideration of the issues, pertinent to the show cause notice. On remand, the petitioner participated in the proceeding before the adjudicating body, purported to raise the issue of jurisdiction, but the order-in-original, which was passed and against which the writ petition has been filed clearly holds that the petitioner's conduct is a factor which would enable the adjudicating authority to pass an order imposing penalty. That order dated 29th March, 2014 is now sought to be challenged in the writ petition before this court. Thus, now an argument on jurisdiction is raised for convenience.

That is only to prolong the legal consequences flowing from the adjudication order. In these circumstances, according to Mr. Rana, we must not entertain this writ petition and proceed to dismiss it.

7. Mr. Nedumpara appearing for the petitioner would submit that we must firstly appreciate the nature of the jurisdiction vesting in this court under Article 226 of the Constitution of India, particularly to issue a writ of certiorari. That writ can be claimed as a matter of right. Although there is an alternate and equally efficacious remedy of bringing a suit to challenge the order of adjudication, which is without jurisdiction, null and void, to bring a suit now to challenge that order would mean the petitioner will have to overcome the bar of limitation. In these circumstances, all the more, we should not relegate the petitioner to any alternate remedy, much less of an appeal within the statutory framework. It is, therefore, Mr. Nedumpara's contention that we should entertain the petition.

8. Mr. Nedumpara, while elaborating this contention on jurisdiction would invite our attention to section 8(3) and (4) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "the FERA"). Mr. Nedumpara submits that the petitioner has not challenged the constitutionality of this provision.

Instead, the petitioner is praying that this provision be interpreted in terms of the statutory prescription. It raises a presumption that if the conditions are not satisfied, then, alone an offence is committed. In the show cause notice, there is no material or evidence relied on to show that the petitioner violated section 8(3) of the FERA. The allegations constituting the charge or the materials to support the same are not there on record. Barring an annexure to the show cause notice, there is nothing with the respondents, which would enable them to conclude that there is a violation of the law. Mr. Nedumpara then relies on section 49 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as "the FEMA"). He submits that if this is a successor legislation, then, the same contains sections 13 and 16(3). These two provisions have a material bearing on the controversy, according to Mr. Nedumpara. He would submit that there is, therefore, a departure from the FERA and in FEMA, these specific provisions would enable the show cause notice to be adjudicated under the successor legislation. While it is true that nobody has a vested right in procedure and in that sense there is a retrospective operation of the statute, but that is pursuant to a repeal. The FEMA repeals the FERA, but what it keeps alive is the power to proceed and adjudicate a show cause notice in accordance with the FEMA. If that is to be adjudicated in

accordance with the FEMA, then, the pre-condition for such adjudication having not been complied with, the adjudication must fail. Mr. Nedumpara would submit that in the present case, there is no compliance. There is absolutely no reference to the authority of the adjudicating body. There is a violation of section 16(3) of the FEMA. The show cause notice being issued and adjudicated in violation of this prescription, it must fail on this count alone. Once the show cause notice itself does not survive, then, the order of adjudication will also fail. Mr. Nedumpara would submit that the provisions of FEMA will prevail. Thus, even if the FEMA is violated and by the effect of repeal of FERA by FEMA, the FEMA can be resorted to. Then, the pre-conditions having not been satisfied and as prescribed by FEMA, the whole adjudication is null and void. That is how the jurisdiction of this court to grant a writ of certiorari is invoked by the petitioner. According to Mr. Nedumpara, we must allow it to be invoked. Mr. Nedumpara has handed over to us copies of several judgments of the Hon'ble Supreme Court and he essentially relies upon the principles in one of the earliest cases. He would submit that in all these earlier cases, the principle that has been enunciated by the Hon'ble Supreme Court and to be followed later is not only that the writ of certiorari would reach to correct the obvious error occurring on the face of the record. It can be claimed so as to set

aside an order, which is ex-facie without jurisdiction. There is no rule with regard to certiorari as there is mandamus that it will lie when there is no other equally efficacious remedy. Mr. Nedumpara would, therefore, submit that we must take note of all the submissions and essentially on jurisdiction and grant the prayer in the petition.

9. Mr. Rana, on this aspect of the matter, would submit that FEMA is a complete code. There are two appeals, which are provided by that law. One appeal would lie to the appellate tribunal set up in the scheme of the statute. The second appeal would lie to this court. That is how the objection to the maintainability has been raised. Secondly, the FEMA repeals FERA. However, the effect of repeal, as spelt out by section 49 of this statute with sub-sections (3) and (4) therein would have to be taken into consideration. That does not mean that a show cause notice issued earlier and prior to FEMA coming into force cannot be adjudicated at all. That sub-section (3) of section 16 cannot be read into section 49 of the FEMA. In these circumstances and relying upon Rule 3(1) of the FERA Adjudication Rules and section 51 of the FERA, Mr. Rana would submit that the power to adjudicate vesting in the adjudicating authority is saved. Once that is saved and the adjudication can

proceed, then, that has not to necessarily comply with all the provisions of the FEMA. In these circumstances, the jurisdiction has been properly exercised. If the complaint is that the order is erroneous on merits in the sense it does not take into consideration the necessary materials, which would establish compliance with sub-sections (3) and (4) of section 8 of FERA or the successor legislation, then, even now the petitioner can go and produce these materials and satisfy the authority that the show cause notice be dropped on merits. That is an opportunity available and if that was not extended earlier, it could have been availed of in appeal on the earlier occasion. In these circumstances, we must not interfere with the orders under challenge is the submission. Mr. Rana also brought to our notice the stand of the petitioner before the adjudicating authority in the earlier round and expressly before the appellate authority/tribunal. In these circumstances, he would submit that we must not allow a just and fair adjudication to be defeated or frustrated on any technical ground. Even now, the respondents are ready and willing to render substantial justice is the submission made by Mr. Rana, on instructions.

10. Mr. Nedumpara would submit that now after a lapse of nearly a decade and more, the necessary proofs and materials

cannot be available. The transaction is as old as of 22 years. Now the records in relation to that transaction are not available once the office of the petitioner was located in a building which has now collapsed. In that view of the matter and given this practical difficulty, no point would be served by relegating the petitioner to the same adjudicating machinery is, therefore, the argument of Mr. Nedumpara.

11. It is on the above arguments that we have to consider whether to entertain the petition or to grant any relief therein. We will have to notice a few facts before we can pronounce upon the submissions of the learned counsel, noted above.

12. The petitioner carries on a business and during the course thereof, it is stated to have imported goods in India. In consideration thereof, they are supposed to have remitted foreign exchange. The notice alleges that the petitioner failed to submit the respective bills of entry/postal/courier wrapper evidencing import of goods into India, for which, the foreign exchange remittances were effected and thereby failed to submit requisite documentary evidence in respect of the import to their authorised dealer. This non-submission of documentary evidence of import of goods into India is contrary to the terms of paragraph 7A.20(i) of the Exchange Control Manual, 1993. The notice

refers to section 8(3) and section 8(4) of the FERA and then alleges that the petitioner-noticee has contravened the provisions of section 8(3) read with section 8(4) of this Act and rendered itself liable to be proceeded against under section 50 of the said Act read with sub-sections (3) and (4) of section 49 of the FEMA. That is how the petitioner was required to show cause in writing within 10 days from the date of receipt of the show cause notice, why adjudication proceedings, as contemplated in section 51 of the FERA read with sub-sections (3) and (4) of section 49 of the FEMA should not be held against the petitioner for the said contravention. The attention of the petitioner was invited to proviso to Rule 3 of the Adjudication Proceedings and Appeal Rules, 1974, whereby, in case it is decided to hold adjudication proceedings, a personal hearing of the case could be waived on their request. That is why they are supposed to inform the authorities whether they desire to avail of this opportunity of personal hearing. Else, the proceedings would be disposed of on the basis of the available evidence. This is a notice dated 16th May, 2002.

13. Thereafter, there was an order passed by the authority and which noted that the petitioner is one such importer who had acquired foreign exchange equivalent to Rs.28,47,215/-,

Rs.62,16,661/-, Rs.33,38,300/- and Rs.28,33,948/- and had failed to submit the exchange control copy of bills of entry of the relevant imports to their authorised dealer evidencing the imports of goods as required in para 7A.20 of the Exchange Control Manual. The show cause notice, therefore, was issued, but in response thereto, no reply was received from the petitioner. Therefore, a call notice dated 23rd October, 2003 was issued to the petitioner under Rule 3 of the Adjudication Proceedings and Appeal Rules, 1974, requiring them to appear for personal hearing on 7th November, 2003. It was served on them by the substituted form of service by affixation under Rule 9(C) of the FEMA (Adjudication Proceedings and Appeal) Rules, 2000 under panchanama drawn on 4th December, 2003. The petitioner failed to respond to the call notice issued. A summons dated 14th January, 2004 under section 53 of the FERA read with section 49(3) and (4) of the FEMA was also sent to the Branch Manager, Standard Chartered Bank, Fort Mumbai to ascertain the actual position of the case. In response to this summons, the Standard Chartered Bank, Fort branch, Mumbai, vide letter dated 27th January, 2004, intimated that the petitioner importer had submitted evidence of import in respect of remittance of Rs.33,38,300/- and had not submitted the same in case of four remaining remittances. That is how the another call notice was

served on the petitioner on 5th October, 2004 requiring them to appear for personal hearing on 12th October, 2004.

14. It is pertinent to note that in response to this call notice, Mr. H. R. Shetty and Company, Advocates, Solicitors and Notaries, on behalf of the petitioner, addressed a letter dated 7th October, 2004 stating that their client's, namely, the petitioner were not able to locate the documents pertaining to the subject matter of the show cause notice and requested to furnish the documents and also requested for adjournment of hearing. The available information was given to them on 8th October, 2004 and once again, a call notice was issued on 11th October, 2004 requiring them to appear for personal hearing on 18th October, 2004. In response to this notice, the petitioner addressed a letter dated 18th October, 2004 stating that their previous registered office situated at Poonam Chambers collapsed in September, 1997, due to which, some of their vital records/documents, including those pertaining to the information to be submitted in the instant case had been misplaced and not traceable and that an extension of one month time be granted to them to enable them to obtain the required information, which was denied.

15. That is how on examination of records, the Deputy Director passed an order on 19th October, 2004 imposing penalty. At the

same time, that order recorded that the petitioner had submitted the required evidence of import against the remittance of Rs.33,38,300/- and the bankers also confirmed the same. The authority, therefore, was satisfied that no further proceedings are necessary in the matter and accordingly, the impugned show cause notice was dropped insofar as Memorandum No. 4.

16. Pertinently, aggrieved and dissatisfied by this order, an appeal was preferred being Appeal No. 1198 of 2004 before the Appellate Tribunal for Foreign Exchange and that appeal, together with others, came to be disposed of on 1st November, 2007. While taking up those appeals and deciding them by the said order, the appellate tribunal noted the arguments and held as under:-

“3. Ld. Counsel Shri Ashok Arora brought to the notice of this Tribunal different photocopies of bill of entry filed in respective appeals. According to him, import of goods is made after taking different remittances in instalments of foreign exchange. However, the Shaw Cause Notice was not served on the appellants. This is the reason that the appellants could not satisfy the Adjudicating Officer of their bona fides and proper utilization of remitted foreign exchange. According to him, this is a fit case for remand for fresh adjudication.

4. Per contra Shri A. C. Singh, DLA, contended that the appellants are free to demonstrate before this Tribunal, the proof of import of goods against different remittances of foreign exchange and he opposed for remanding back the matter.

5. When we look to the pleadings on behalf of the appellants made by Shri Ashok Arora, Advocate, we feel

that appellants have a case to answer before Adjudicating Officer who may decide the matter. This Tribunal being an appellate authority need not to go in different details of the proof led for import of the goods. The Adjudicating Officer may look to this aspect of the matter. We feel that there will be nothing amiss if this course of action will be taken up. Therefore, we set aside and quash the impugned order in these appeals and remand back the matter for fresh adjudication. An order is passed accordingly. The Adjudicating Officer may decide the matter preferably within six months from the date of first appearance of the appellants who are directed to appear before Adjudicating Officer on 24th December, 2007.”

17. Thus, the order on the show cause notice was set aside and the matter was sent back to the adjudicating authority. Before the adjudicating authority, a personal hearing was held on 18th March, 2014. At that stage, the petitioner engaged Mr. Nedumpara, who remained present. He sought to argue that the tribunal has no jurisdiction to conduct the inquiry or trial in furtherance of the show cause notice. He argued that once the issue of competence or jurisdiction of a court or a tribunal to embark upon an inquiry is raised, such court or tribunal shall decide the question of its own jurisdiction as a preliminary issue. Unless and until that is done, it has no competence to go into the merits of the case. It must record a finding that the challenge to the jurisdiction and competence is unfounded. Thus, the argument was that the jurisdiction was challenged on two grounds. Firstly, there is no complaint nor there is a complainant as mandated by sub-section 16(3) of FEMA. No notification, by

which an officer was appointed to act as a complainant in the instant case is existing or is made available to them. It is stated that the order appointing a particular officer as an adjudicating officer was not made available to them nor a copy of the Gazette, by which he would exercise his powers. There is not even a reference to the notification at the hands of the Central Government, if any, and that has also not been furnished.

18. The adjudicating authority, once again, inquired with the petitioner's representative whether it desires to submit anything in support of their case on merits. The reply was, until and unless the question of jurisdiction is decided, to hold the inquiry or the question of conducting inquiry does not arise. Hence, the authority is duty bound to decide either way as to its own competence to conduct the inquiry. If this tribunal holds that it has the authority, the decision of the tribunal would constitute issue estoppel and that is distinct from the cause of action estoppel. Therefore, the order on the point of jurisdiction, if adverse to the petitioner, would be challenged before a competent forum. It was stated that it would be challenged in this court. In the event this court rejects the plea, then, the petitioner will reply to the show cause notice and raise many other contentions both, factual and legal. Presently, the petitioner has no such desire and

unless and until the preliminary issue is decided one way or the other, it would not place any material on the merits before the adjudicating authority.

19. It is after this that the impugned order dated 3rd April, 2014 has been passed. That is on a de-novo adjudication of the show cause notice. That was after giving effect to the tribunal's order dated 1st November, 2007.

20. The order of the adjudicating authority on remand notes that four opportunities for personal hearing were given, namely, 19th March, 2008, 12th May, 2008, 22nd July, 2008 and 4th August, 2008. The petitioner did not attend this hearing except the one on 22nd July, 2008 nor did the petitioner produce any document or proof of import. The adjudicating authority, therefore, proceeded on the footing that the petitioner is negligent and careless towards these adjudication proceedings.

21. Taking advantage of the time-lag and when the matters were placed on 11th February, 2014, 13th February, 2014 and 17th February, 2014, eventually on 17th February, 2014, the petitioner appeared and requested for adjournment for filing reply. The next date was given on 24th February, 2014, during which, they submitted the written submissions dated 18th February, 2014 on

the point of jurisdiction. At the same time, the order records that the petitioner submitted that it wants to file its reply with evidence to support the claim against the show cause notice and requested for more time. That is how time was granted and the matter was placed on 18th March, 2014. On 18th March, 2014, the above noted stand was taken by the petitioner.

22. It is in these circumstances that the adjudicating authority proceeds on the footing that the jurisdiction is derived by it from a notification dated 24th August, 2012, based on which, circular/order dated 14th September, 2012 has been issued by the Directorate of Enforcement. That is how the Deputy Director is empowered to adjudicate cases involving amount of value in excess of fifty lakhs, but not exceeding Rs. one crore. Accordingly, the show cause notices were taken up for adjudication and in the process, personal hearing opportunity was given to the petitioner. After this, the impugned order proceeds to observe and hold as under:-

“Further, it is also very important to mention here that the noticee during the earlier adjudication process or even during the hearing of the matter in the Appellate Tribunal had not questioned the issue of jurisdiction of adjudicating authority but had infact submitted before the Tribunal that they have imported the goods and have the copies of the respective bills of entry against the said remittances which they want to submit before the adjudicating authority. Accordingly the case was remanded back. But now during the personal hearings, instead of submitting the documentary proof, the noticee is just delaying the

adjudication process by questioning the jurisdiction of the adjudicating authority.

Thus, as can be seen from the above facts, over a period of time, the noticee has been given 12 personal hearing opportunities to represent its case and submit bills of entry or any alternative documentary proof as evidence against the said remittances. However, despite giving several opportunities, the noticee has not submitted any documents in support of their claim but has instead raised the question about the jurisdiction of the adjudicating authority, which is nothing but a tactic by the noticee to delay the adjudication proceedings.

Therefore I consider the available material on record to decide the said case. From the documents available on file it is found that the noticee has not submitted any evidence in respect of remittances of Rs.28,47,215/-, Rs.62,16,661/-, Rs.33,39,600/- & Rs.28,33,948/-. I also observe that the noticee has been given several opportunities for personal hearing but they have not responded with any satisfactory reply regarding submission of evidence of import for which the said remittances were sent abroad. Even their authorized dealer viz. Standard Chartered bank, Fort Branch, Mumbai vide their letter dated 27.01.2004 has confirmed that the noticee has not submitted the evidence of import in respect of remittances in question. On consideration of the above facts, I am convinced that M/s. ESAB India Ltd., Mumbai had acquired and remitted foreign exchange equivalent to Rs.28,47,215, Rs.62,16,661/-, Rs.33,39,600/- & Rs.28,33,948/- through their authorized dealer for the purpose of imports of goods but no documentary evidence was produced by them evidencing the import of goods. It is obligatory on the part of importer to produce the exchange control copy(s) of the bills of entry of the subject imports to their authorized dealer as proof of imports. No such documents were produced by them in respect of remittances in question. Thus it is evident that import against the remittance of Rs.28,47, 215, Rs.62,16,661/-, Rs.33,39,600/- & Rs.28,33,948/- has not taken place and thereby not utilizing the foreign exchange so acquired, is a contravention of the provisions of section 8(3) and (4) of FERA, 1973 read with section 49(3) and (4) of FEMA, 1999. Accordingly, I pass the following order:

ORDER

I therefore impose a penalty of Rs.28,47,215/- (Rupees twenty eight lakh forty seven thousand two hundred and fifteen) in case of SCN-I, Rs.62,16,661/- (Rupees sixty two lakh sixteen thousand six hundred and sixty one) in case of SCN-III, Rs.33,39,600/- (Rupees thirty three lakh thirty nine thousand six hundred) in case of SCN-IV and Rs.28,33,948/- (Rupees twenty eight lakh thirty three thousand nine hundred and forty eight) in case of SCN-V in terms of the powers conferred on me under section 50 of FERA, 1973 read with section 49(3) and (4) of FEMA, 1999.

The total penalty of Rs.1,52,37,424/- (Rupees one crore fifty two lakh thirty seven thousand four hundred and twenty four) imposed on the noticee as aforesaid should be deposited in the office of the Joint Director, Directorate of Enforcement, 2nd floor, Mittal Chambers, Nariman Point, Mumbai - 400 021 by way of demand draft drawing in favour of "D.D.O. A/c, Directorate of Enforcement, Mumbai" within 45 days from the date of receipt of this Adjudication Order."

23. Pertinently, both statutes FERA and FEMA are referred in the show cause notice and the impugned orders. Advisedly, the petitioner did not deem it fit and proper to question the competence and power of the authority to adjudicate upon the show cause notice. It is in the backdrop of the above that we are not impressed by the argument of Mr. Nedumpara that the whole proceedings are null and void or without jurisdiction. We are of the firm opinion that we are not obliged to go into the question of jurisdiction or competence of the authority. The petitioner may say it is purely a legal issue but on the own showing of the petitioner and the arguments on the point of jurisdiction as noted

above, it is evident that it is a mixed one. If it is a mixed one, it ought to have been raised at the earliest possible opportunity. There was enough opportunity for the petitioner to raise it and seek a ruling on it. It was not raised during the first round of adjudication. On the other hand, when in the first round of adjudication the petitioner appeared, it indeed relied upon a proof of import. It also relied upon a contemporaneous record of the Standard Chartered Bank. That is how one of the demand or issue came to be answered in their favour and by dropping the show cause notice. Thus, partial relief was derived by arguing the case on merits. This is a voluntary submission of the petitioner to the authority, competence and jurisdiction of the forum adjudicating the show cause notice. Equally, aggrieved by the partial loss and the order to that effect, when the matter was carried to the tribunal, even before the tribunal, the petitioner had an opportunity to raise all the arguments as are raised before us by Mr. Nedumpara. They were not raised. It is expressly on the tribunal's findings and success that the petitioner's counsel/advocate desired an opportunity to produce the necessary documents or proof of import. That is how they desired to establish a nexus or co-relation with the import and the remittances abroad. Thus, this was an opportunity sought to make good their case on merits.

24. Pertinently, despite all this and after many orders and decades from the import, Mr. Rana learned senior counsel appearing for the respondents in all fairness stated that even now if the petitioner is ready and willing to bring the necessary materials and prove the genuineness of the import transactions, the adjudicating body or authority will grant that opportunity and in this peculiar facts, but not treating this exercise as a precedent for future cases. When this suggestion was put to Mr. Nedumpara, he says that the imports are as old as 1996, there are no chances of the records being available after more than two decades, the building in which the petitioner was having its office earlier being pulled down or has collapsed. All the more, therefore, there is nothing with the petitioner to substantiate and prove their case on merits.

25. It is in these circumstances, we are of the opinion that though a writ of certiorari can be issued by this court despite the presence of alternate and equally efficacious remedy, that is not a prohibition or rule, but a matter of prudence, still, whether to issue such a writ or not depends upon the facts and circumstances of each case. No general rule can be laid down. Eventually, this court's jurisdiction under Article 226 of the Constitution of India is extraordinary, discretionary and

equitable. One who invokes this jurisdiction must approach this court with clean hands. Once we have noted that the petitioner never disputed the power of the authority to issue the show cause notice, the competence to adjudicate it and pass a final order thereon and that the notice refers to both enactments, namely, FERA and FEMA, all the more we are not inclined to grant any relief in writ jurisdiction.

26. Once we take the above view of the matter, then, it is not necessary for us to go into the plethora of judgments cited before us by Mr. Nedumpara. We have already seen that these judgments would be relevant and we can go into the principles laid down therein in further details in the event we are inclined to consider the legal and factual issues. Once we have noted that the legal and factual issues or the point of jurisdiction or competence of the authorities were never raised during the earlier round and even the subsequent round of adjudication and the petitioner is aware of the presence of an alternate and equally efficacious remedy of appeal against the impugned order to the appellate tribunal, we refuse to entertain this writ petition. It is, accordingly, dismissed, but without any order as to costs.

(PRAKASH.D.NAIK, J.) (S.C.DHARMADHIKARI, J.)