

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.818 OF 2020

Jyoti Plastic Works Pvt. Ltd. ... Petitioner
Vs.
Union of India and others ... Respondents

AND
WRIT PETITION NO.828 OF 2020

Jai Plastics ... Petitioner
Vs.
Union of India and others ... Respondents

AND
WRIT PETITION NO.821 OF 2020

N. D. Patel ... Petitioner
Vs.
Union of India and others ... Respondents

Mr. Shriram Sridharan for Petitioners in all the Petitions.
Mr. P. S. Jetly, Senior Advocate a/w. Mr. J. B. Mishra for Respondents in all the Petitions.

**CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.**

**Reserved on : OCTOBER 20, 2020
Pronounced on: NOVEMBER 05, 2020**

JUDGMENT and ORDER : (Per Ujjal Bhuyan, J.)

Subject matter and reliefs sought for in the three writ petitions being identical, those were heard together on 20.10.2020 and are being disposed of by this common judgment and order.

2. Heard Mr. Sridharan, learned counsel for the petitioners and Mr. Jetly, learned senior counsel alongwith Mr. J. B. Mishra, learned counsel for the respondents.

3. The three writ petitions have been filed under Article 226 of the Constitution of India seeking a direction to the respondents, more

particularly respondent No.2, to substitute the estimated amount payable as mentioned in forms SVLDRS-2 and SVLDRS-3 with the tax dues less tax relief amounts mentioned in the applications (declarations) filed by the petitioners in form SVLDRS-1 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

4. Short point for consideration in all the three writ petitions is what would be the amount of tax dues in respect of the petitioners? Whether it would be the amount mentioned in the show cause-cum-demand notice or the amount determined by the adjudicating authority in the order in original which amount has been accepted by the department though the order in original has been set aside by the appellate forum?

5. For the sake of convenience we take up the facts and pleadings in Writ Petition No.818 of 2020 wherein the relevant figures in respect of the other two writ petitions are also mentioned.

6. Petitioner is a private limited company incorporated under the Companies Act, 1956 having its office at Malad (West), Mumbai.

7. The three petitioners were issued show cause-cum-demand notice dated 17.01.1992 from the office of Collector of Central Excise, Bombay-II on the allegation that petitioners had contravened provisions of the Central Excise Rules, 1944. In the show cause-cum-demand notice the amounts stated to be due against each of the three petitioners were mentioned as under:-

1.	M/s. Jyoti Plastic Works Private Limited (Petitioner in Writ Petition No.818 of 2020)	Rs.66,18,763.00
2.	M/s. Jai Plastics (Petitioner in Writ Petition No.828 of 2020)	Rs.21,79,966.00
3.	M/s. N. D. Patel (Petitioner in Writ Petition No.821 of 2020)	Rs. 6,91,535.00
	Total	Rs.94,90,264.00

8. It is stated that Collector of Central Excise, Mumbai-II passed the order in original on 10.02.1993 more or less confirming the demand raised in the show cause-cum-demand notice.

9. Petitioner challenged the said order in original dated 10.02.1993 before the then Customs, Excise and Gold (Control) Appellate Tribunal, Mumbai (CEGAT). CEGAT *vide* order dated 28.03.1994 remanded the matter back to the Commissioner of Central Excise to consider the entire issue. It was held that since the Collector had not determined the exact amount of duty payable by the petitioner at the time of passing of final order and in view of the discrepancies noticeable in the order in original, the matter was remanded back to the Commissioner to re-determine the exact duty amount payable by the petitioner.

9.1. On remand Commissioner of Central Excise passed fresh order in original dated 29.03.2006. In the said order Commissioner adjudicated only on the quantum of duty and penalty. As per the said order Commissioner of Central Excise confirmed the total demand against the three petitioners as under :-

1.	M/s. Jyoti Plastic Works Private Limited (Petitioner in Writ Petition No.818 of 2020)	Rs. 6,15,017.00
2.	M/s. Jai Plastics (Petitioner in Writ Petition No.828 of 2020)	Rs.10,12,375.00
3.	M/s. N. D. Patel (Petitioner in Writ Petition No.821 of 2020)	Rs. 2,66,193.00
	Total	Rs.18,93,585.00

10. Thus from the above it is evident that against the total demand of Rs.94,90,264.00 made in the show cause-cum-demand notice dated 17.01.1992, the total demand was quantified by the Commissioner of Central Excise in the order in original dated 29.03.2006 at Rs.18,93,585.00, with the break-up *vis-a-vis* the petitioners as indicated above.

11. Petitioners have stated that respondent No.3 did not challenge the said order in original dated 29.03.2006. In other words, there was acceptance by the department as to the determination of the amounts due from the petitioners.

12. However, petitioners preferred appeals against the said order in original dated 29.03.2006 before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (CESTAT) under section 35F of the Central Excise Act, 1944. In the appeals the principal prayer made was for setting aside that portion of the order in original dated 29.03.2006 passed by the Commissioner of Central Excise, Mumbai-V which was against the petitioners and thereby to allow the appeals in entirety with consequential reliefs.

13. CESTAT heard the appeals together and by the order dated 30.10.2017 remanded the matter back to the adjudicating authority to decide the issue on merit apart from quantification. CESTAT opined that when on the previous occasion Tribunal had remanded the matter for re-quantification the issue on merit was kept open. Remand was not confined to re-quantification but adjudication post remand was confined to quantification only. In such circumstances, CESTAT set aside the order in original dated 29.03.2006 and remanded the matter back to the adjudicating authority to pass a fresh order on all the issues, thus, allowing the appeals to the extent of remand. Relevant portion of the order of CESTAT is extracted hereunder :-

“5. We have carefully considered the submissions made by both sides. We find that in the first adjudication the learned Commissioner had passed the adjudication order on merit. The appellant filed appeal before the Tribunal which was remanded to the adjudicating authority to decide on re-quantification. However no findings was given on the merit, limitation etc. It is observed from the remand order of the Tribunal that the learned counsel for the appellant categorically stated that issue on merit, limitation etc. may be kept open while remanding the case. In the Tribunal order this prayer of the Counsel was not rejected. In the circumstances, we are of the view that since the

Tribunal had remanded for re-quantification, at the same time the issue on merit was not decided as Tribunal had not gone on other issues such as merit, limitation etc. It cannot be said the remand is confined to re-quantification and the appellant was not at liberty to raise other issue. The judgment relied upon by the learned AR in case of *CCE Vs. Kalyani Sharp India Ltd.* (supra) wherein the term “in accordance with law” was interpreted, however in the said judgment the assessee categorically had given up their case on merit, therefore the only issue left was the quantification of demand. As per the fact of the present case, the appellant had never given up their claim on merit, limitation etc. Therefore, the judgment cited by the Learned AR is not applicable in the fact of the present case. As per our above discussion, we set aside the impugned order and remand the matter to the adjudicating authority to pass a fresh order on all the issues. Appeals are allowed by way of remand.”

14. However, after the order was passed by the CESTAT on 30.10.2017 adjudicating authority did not take up the matter for adjudication in terms of the remand order passed by the CESTAT and did not pass the consequential order in original post remand.

15. In the meanwhile, Central Government as part of Finance (No.2) Act, 2019 introduced an amnesty scheme called ‘Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019’ (briefly ‘the scheme’ hereinafter) providing for settlement of legacy disputes relating to central excise and service tax by paying certain specified percentage of tax dues.

16. In terms of the scheme, petitioners filed applications (declarations) under the category ‘litigation’ and sub-category ‘show cause notice involving duty pending’. As per the declarations filed by the petitioners disputed tax dues were mentioned as Rs.6,15,017.00, Rs.10,12,375.00 and Rs.2,66,193.00 as determined by the Commissioner in the order in original dated 29.03.2006. However, respondent No.2 i.e. the Designated Committee constituted under the scheme issued form SVLDRS-2 stating that the estimated amount payable by the applicants (declarants) were Rs.66,18,763.00, Rs.21,79,966.00 and Rs.6,91,535.00

i.e. the amounts originally demanded in the show cause-cum-demand notice dated 17.01.1992. Though petitioners filed objections and personal hearing was granted, form SVLDRS-3 was issued reiterating the same amount as mentioned in form SVLDRS-2.

17. Aggrieved, the writ petitions have been filed seeking the reliefs as indicated above.

18. When the three writ petitions were moved before this court on 17th February, 2020, this court had passed the following order :-

“2. These Petitions which have been filed on 15 February 2020 have been mentioned for Circulation today and we have taken up these Petitions on board for production today itself. The prayer of the Petitioner in these Petitions, in short is to direct the Respondents to accept certain amounts which according to the Petitioner are correctly payable under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The learned Counsel for the Petitioner states that the last date for making the payment is 19 February 2020. The relief sought for by the Petitioner is to rectify the estimated amount finally with directions to the Respondents to modify the amounts on the system server and permit the Petitioner to deposit the amount.

3. We note from the praecipe filed by the Petitioner that communication was dated 20 January 2020 and the Petition is filed on 15 February 2020. At the last minute it is not possible to issue any such interim order. Place these Petitions on board on 11 March 2020.

4. It is open to the Petitioner to deposit the amount stated on the server of the Respondents without prejudice to their rights and contentions and we make it clear that if Petitioner succeeds in demonstrating before the Court the correct amount payable is as per the Petitioner’s assertion, then Court may direct Respondents to refund the excess amounts to the Petitioner without Petitioner taking recourse to a separate proceedings. The Petitioner will serve Respondents with a copy of these Petitions and file affidavit of service.”

18.1. Thereafter on 13.03.2020 learned counsel for the petitioners informed the court that the requisite amounts had been deposited without prejudice to the rights of the petitioners. Since the respondents had not filed reply, time was granted to the respondents to file reply.

18.2. Thereafter, COVID-19 pandemic broke out which affected functioning of the court. On 03.09.2020 when the writ petitions were again taken up, the following order was passed:-

- “2. We have perused our orders dated 17.02.2020 and 13.03.2020.
3. It is seen that the disputed amount has been paid by the petitioners without prejudice to their rights.
4. On a query by the Court, learned counsel for the petitioners submits that he would prefer the matter relating to claims made by the petitioners to be heard by the Court rather than being relegated to the forum of designated committee.
5. For proper decision we feel that affidavit of the respondents would be necessary.
6. Accordingly we direct respondents to file reply affidavit within three weeks from today.
7. Petitioners may file rejoinder affidavit thereafter.”

18.3. Thereafter separate but identical affidavits in reply were filed by the respondents through Mr. Sanjeev V. Chetule, Assistant Commissioner of Central Goods and Service Tax and Central Excise, Mumbai West, Commissionerate.

19. It is stated that petitioner had filed the declaration under section 125 of the scheme in respect of the show cause-cum-demand notice dated 17.01.1992. Show cause-cum-demand notice was adjudicated *vide* order in original dated 29.03.2006 (issued on 30.03.2006) by the Commissioner of Central Excise, Mumbai-V whereby the demand was partially confirmed to the extent of Rs.6,15,017.00 as against the original demand of Rs.66,18,763.00. As a matter of fact, the above order in original dated 30.03.2006 was passed on remand by the CEGAT, Mumbai *vide* order dated 28.03.1994. Appeal to CEGAT was made against the initial order in original dated 10.02.1993.

19.1. Against the order in original dated 29.03.2006 whereby the duty demanded was partially confirmed, petitioner preferred appeal before

CESTAT. By order dated 30.10.2017 CESTAT set aside the order in original and remanded the matter back to the adjudicating authority for passing fresh order in respect of all the issues.

19.2. Reverting to the order in original dated 29.03.2006, it is stated that the said order was accepted by the department and accordingly no departmental appeal was filed against the said order in original. Regarding order of CESTAT dated 30.10.2017 it is stated that Deputy Commissioner (Review), Mumbai (West) vide letter dated 03.01.2020 informed that the said order has been accepted by the department. It is however stated that after CESTAT had remanded the matter back to the adjudicating authority for passing fresh order, no final hearing had taken place on or before 30.06.2019. Matter was pending before the adjudicating authority on 30.06.2019.

19.3. Respondents have stated that as in this case petitioner had filed appeal against the order in original dated 29.03.2006 which order was set aside by the CESTAT *vide* order dated 30.10.2017 while remanding the matter back to the adjudicating authority for passing fresh order on all the issues and on remand the matter was pending with no final hearing having been conducted by the adjudicating authority on or before 30.06.2019 status of the petitioner's application (declaration) would be that of pending show-cause notice covered under sections 125(1) and 123(b) of the scheme.

19.4. Since the tax dues as per the show cause-cum-demand notice was Rs.66,18,763.00, the declarant was eligible for tax relief to the extent of 50% of the tax dues and thus liable to pay 50% of the tax dues as provided under section 124(1)(a)(i) of the scheme. Therefore, after availing relief of Rs.33,09,381.50 i.e., 50% of Rs.66,18,763.00 petitioner would be required to pay Rs.33,09,381.50.

19.5. Since the order in original dated 29.03.2006 was set aside and the

matter was remanded back to the adjudicating authority for fresh decision by CESTAT, subject case derived the status of show-cause notice pending adjudication.

19.6. After issuance of form SVLDRS-2, Designated Committee granted personal hearing to the declarant and thereafter issued statement in form SVLDRS-3 for Rs.33,09,382.00 being the higher payable amount considering the original tax dues appearing in the show cause-cum-demand notice.

19.7. Refuting the contention of the petitioner that its declaration should be categorized under litigation category, it is contended that as no appeal was pending against the subject order in original, the declarant is not entitled for relief in terms of the reduced amount of tax dues as mentioned in the order in original. Since the subject case has derived the status of pending show-cause notice, the total tax dues appearing in the show cause-cum-demand notice i.e. Rs.94,90,264.00 has to be taken into consideration for giving any relief under the scheme and not Rs.18,93,585.00 as claimed by the petitioners. In this connection, reliance has been placed on section 123, more particularly on clause (b) thereof.

20. Mr. Sridharan, learned counsel for the petitioner submits that entire approach of the respondents is wrong. Respondents have completely overlooked the primary objective of the scheme and adopted an approach which defeats the very purpose of this scheme. Idea behind the scheme is to unload the baggage of legacy litigations relating to service tax and excise. It is a beneficial provision intended to confer certain benefits on the declarants who are eligible to make declarations under the scheme. The scheme cannot be interpreted and applied in a manner which causes hardship and prejudice to a declarant.

20.1. Elaborating further, learned counsel submits that the amount

mentioned in the show cause-cum-demand notice was substantially reduced in the order in original passed following remand by the appellate authority. This reduced figure has been accepted by the department. However, against this reduced figure, petitioner had gone in appeal before the CESTAT. CESTAT took the view that the adjudication should not only be confined to quantification but should also be on merit, limitation, etc. and therefore the matter was again remanded back to the adjudicating authority for a fresh decision on merit etc. apart from quantification after setting aside the order in original. Had the petitioners not filed second round of appeal, they would have been better off with reduced quantification of dues. Even after remand by the CESTAT to the adjudicating authority which adjudication was pending as on 30.06.2019 petitioners would have been better off had they not filed declarations under the scheme. In such circumstances, petitioners cannot be put in a worse condition because they had filed appeal or because they had submitted declarations under the scheme.

20.2. Treating of the amount demanded in the show cause-cum-demand notice as the amount of tax dues after several rounds of adjudication and appeals is wholly erroneous and is required to be interfered with. In support of his contention that petitioners cannot be in a worse condition because of filing appeals and because of filing declarations under the scheme, learned counsel for the petitioners has placed reliance on a number of judgments.

20.3. On a query by the Court, he submits that the amount determined by the adjudicating authority in the order in original dated 29.03.2006 passed on remand would be the tax dues under the scheme and petitioners should pay the tax dues on the basis of the scaled down figures and not on the amount demanded in the show cause-cum-demand notice.

21. Mr. Jetly, learned senior counsel for the respondents referring to

the averments made in the affidavit-in-reply submits that respondents have gone by the letter of the scheme. No appeal of the petitioner was pending as on 30.06.2019. On remand by CESTAT, the adjudicating authority had not concluded the adjudication on or before 30.06.2019. Therefore, the show cause-cum-demand notice was pending as on 30.06.2019. If that be so, then the amount of dues as per the show cause-cum-demand notice would be the tax dues. Accordingly, the Designated Committee rightly treated the amount of Rs.66,18,763.00 in the case of the petitioner and total amount of Rs.94,90,264.00 in respect of all the three petitioners as the tax dues. There is no infirmity in the view taken by the respondents. Accordingly, writ petitions should be dismissed.

22. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record.

23. From the above narration and submissions it is evident that facts are not in dispute. However, for proper appreciation of the rival contentions and for arriving at a just conclusion, it would be apposite to highlight the undisputed facts culled out from the above which are relevant for adjudication.

24. The three petitioners were issued show cause-cum-demand notice by the Collector of Central Excise on 17.01.1992 raising the following demand against each one of them and collectively Rs.94,90,264.00:-

1.	M/s. Jyoti Plastic Works Private Limited (Petitioner in Writ Petition No.818 of 2020)	Rs.66,18,763.00
2.	M/s. Jai Plastics (Petitioner in Writ Petition No.828 of 2020)	Rs.21,79,966.00
3.	M/s. N. D. Patel (Petitioner in Writ Petition No.821 of 2020)	Rs. 6,91,535.00
	Total	Rs.94,90,264.00

25. Following the show cause-cum-demand notice dated 17.01.1992, Collector of Central Excise passed the order in original on 10.02.1993 more or less confirming the demand raised in the show cause-cum-demand notice. This was challenged by the petitioners before the CEGAT. CEGAT *vide* order dated 28.03.1994 remanded the matter back to the adjudicating authority pointing out that the adjudicating authority had not determined the exact amount of duty payable by the petitioners at the time of passing the order in original keeping all issues, such as, merit, limitation etc. open.

26. On remand, Commissioner of Central Excise confined the adjudication only to the quantum and did not go into the merit. Commissioner of Central Excise passed fresh order in original dated 29.03.2006 substantially scaling down the demands against each of the three petitioners as under:-

1.	M/s. Jyoti Plastic Works Private Limited (Petitioner in Writ Petition No.818 of 2020)	Rs. 6,15,017.00
2.	M/s. Jai Plastics (Petitioner in Writ Petition No.828 of 2020)	Rs.10,12,375.00
3.	M/s. N. D. Patel (Petitioner in Writ Petition No.821 of 2020)	Rs. 2,66,193.00
	Total	Rs.18,93,585.00

27. Thus, in respect of M/s. Jyoti Plastic Works Private Limited, against the original demand of Rs.66,18,763.00, demand after adjudication became Rs.6,15,017.00; in respect of M/s. Jai Plastics, against the original demand of Rs.21,79,966.00, demand after adjudication became Rs.10,12,375.00; and in respect of M/s. N. D. Patel, from Rs.6,91,535.00, demand became Rs.2,66,193.00. Against the total demand of Rs.94,90,264.00, after order in original dated 29.03.2006, it became Rs.18,93,585.00.

28. Respondents in their affidavit have made a categorical statement that the order in original dated 29.03.2006 was accepted by the department and no departmental appeal was filed against the said order. On the other hand, petitioners preferred appeal before the CESTAT. Contention of the petitioners before CESTAT was that the adjudicating authority while passing the order in original dated 29.03.2006 on remand had confined its adjudication only to quantification and did not go into the challenge made by the petitioners on merit, limitation, etc. The prayer was to set aside the offending portion of the order in original dated 29.03.2006 and grant relief to the petitioners in toto. This view point of the petitioners was accepted by the CESTAT and by order dated 30.10.2017, the matter was remanded back to the adjudicating authority to decide the issue on merit apart from quantification. To enable the adjudicating authority to pass a fresh order in original, CESTAT set aside the order in original dated 29.03.2006.

29. After the matter was remanded, adjudicating authority had not decided the matter and when the scheme was introduced the adjudication was pending as on 30.06.2019 which is the cut-off date. Respondents have taken the position that since the appellate authority had set aside the order in original dated 29.03.2006 the said order was not in existence as on 30.06.2019; what was in existence was the show cause notice dated 17.01.1992, besides there being no pending appeal. Therefore, the demand raised in the show cause-cum-demand notice would be the tax dues in the case of the petitioners. Accordingly, this was the view taken by the Designated Committee while issuing forms SVLDRS-2 and SVLDRS-3.

30. Let us examine whether the above stand taken by the respondents is correct or not but before that the factual narrative may be completed.

31. When the writ petitions were filed at the stage when form

SVLDRS-3 were issued, this Court *vide* order dated 17.02.2020 observed that it was open to the petitioners to deposit the amounts without prejudice to their rights and contentions. It was clarified that if the petitioners succeed in demonstrating before the Court that the correct amount payable is as per petitioners' assertion, Court would direct the respondents to refund the excess amounts to the petitioners without petitioners' taking recourse to separate proceedings. Subsequently on 13.03.2020, learned counsel for the petitioners informed the Court that the amounts had been deposited without prejudice to the rights of the petitioners. Thereafter on 03.09.2020, learned counsel for the petitioners submitted that the matter relating to claims made by the petitioners may be heard by the Court rather than petitioners being relegated to the forum of Designated Committee.

32. Respondents in support of their contention that the amounts mentioned in the show cause-cum-demand notice would be the amounts of tax dues in the case of the petitioners have placed reliance on section 123(b) of the Act, which is part of the scheme.

33. To appreciate the above contentions, we may advert to the relevant provisions of the scheme. But before doing that we may refer to the decision of this Court in *Thought Blurb Vs. Union of India*, decided on **27.10.2020**. In that case, this Court had extracted the speech of the Hon'ble Finance Minister, Government of India while introducing the scheme and also analyzed the statement of objects and reasons of the scheme. This Court had also examined the circular dated 27.08.2019 issued by the Central Board of Indirect Taxes and Customs. Thereafter, it was noted that the scheme has been introduced as a one time measure for liquidation of past disputes of central excise and service tax as levy of central excise and service tax has now been subsumed in the new goods and service tax (GST) regime. The scheme has the twin objectives of liquidation of past disputes pertaining to central excise and service tax on the one hand and disclosure of unpaid taxes on the other hand. As an

incentive, those making the declaration and paying the declared tax verified and determined in terms of the scheme would be entitled to certain benefits in the form of waiver of interest, fine, penalty and immunity from prosecution. After a threadbare analysis of the relevant provisions of the scheme, this Court held that the basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty. Focus is to unload this baggage of the pre-GST regime and allow business to move ahead. Therefore, a liberal interpretation has to be given to the scheme. This is the broad picture which the officials have to keep in mind while considering a declaration under the scheme seeking amnesty. The approach should be to ensure that the scheme is successful and therefore, a liberal view embedded with the principles of natural justice is called for.

34. Sections 120 to 135 of the Act comprises the scheme. Section 123 of the Act which is part of the scheme deals with tax dues. For ready reference, section 123 is extracted hereunder:-

“123. For the purposes of the Scheme, “tax dues” means -
(a) where -

(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.

Illustration 1: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.1000 and amount of penalty of Rs.100. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs.1000

and hence the tax dues are Rs.1000.

Illustration 2: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.900 and penalty of Rs. 90. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs. 900 and hence tax dues are Rs.900.

Illustration 3: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs. 900 and penalty of Rs. 90. The declarant files an appeal against this order of determination. The departmental appeal is for an amount of duty of Rs. 100 and penalty of Rs. 10. The amount of duty which is being disputed is Rs. 900 plus Rs. 100 i.e Rs. 1000 and hence tax dues are Rs. 1000.

Illustration 4: The show cause notice to a declarant was for an amount of duty of Rs. 1000. The order was for an amount of duty of Rs.1000. The declarant files an appeal against this order of determination. The first appellate authority reduced the amount of duty to Rs. 900. The declarant files a second appeal. The amount of duty which is being disputed is Rs.900 and hence tax dues are Rs. 900;

(b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice:

Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant;

(c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019;

(d) where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;

(e) where an amount in arrears relating to the declarant is due, the amount in arrears.”

35. Section 123(a)(i) deals with a situation where a single appeal arising out of an order is pending as on 30.06.2019 before the appellate forum. In that case, the tax dues would mean the total amount of duty which is being disputed in the said appeal. In so far the statutory illustration No.4 is concerned, it deals with a situation when show cause notice is issued to the declarant containing amount of duty of Rs.1000.00. Against this, the declarant files appeal. First appellate authority reduces the amount of duty to Rs.900.00. Declarant thereafter files second appeal against the order of first appellate authority. In such a case, the amount of duty which is being disputed would be Rs.900.00 and hence the tax dues would be Rs.900.00. The above two instances throw sufficient light as to how to interpret the expression 'tax dues' in the case of appeal or further appeal.

35.1. In so far clause (b) is concerned, on which much reliance has been placed by the respondents, it deals with a situation where show cause notice is issued on or before 30.06.2019. In that case, the amount of duty demanded in the show cause notice would be the tax dues.

36. Situation before us is quite unique. *Stricto sensu*, it is neither covered by clause (a) nor by clause (b) of section 123. We say this for the following reasons:-

- a. It is not covered by clause (a) because no appeal was pending as on 30.06.2019;
- b. Regarding clause (b), the situation is that the show cause-cum-demand notice through an adjudicatory process had culminated in an order in original whereby the initial demand raised was substantially lowered. Since this order did not address the merit of the challenge, the appellate authority i.e., CESTAT had remanded the matter back to the adjudicating authority for a decision on merit apart from quantification. For technical and statistical purpose to facilitate the remand order, the order in original was set

aside. However, the adjudication process post remand could not be completed and was pending as on 30.06.2019. Therefore, this situation is not one which can be said to be covered by clause (b).

37. We have already noted and discussed that against the total demand of Rs.94,90,264.00 made in the show cause-cum-demand notice, the order in original dated 29.03.2006 had substantially reduced the same to Rs.18,93,585.00, with corresponding reduction of demand *vis-a-vis* each of the petitioners. Had the petitioners accepted the order dated 29.03.2006 like the respondents had accepted and had the petitioners not preferred appeals before the CESTAT, Rs.18,93,585.00 would have been the determined tax dues of the petitioners, with break up thereof as under:-

1.	M/s. Jyoti Plastic Works Private Limited (Petitioner in Writ Petition No.818 of 2020)	Rs. 6,15,017.00
2.	M/s. Jai Plastics (Petitioner in Writ Petition No.828 of 2020)	Rs.10,12,375.00
3.	M/s. N. D. Patel (Petitioner in Writ Petition No.821 of 2020)	Rs. 2,66,193.00
	Total	Rs.18,93,585.00

38. Secondly, even after the petitioners had filed appeals and following the appellate order the matter has come back on remand, if the petitioners had not filed declarations under the scheme they would still have been better off with the total demand adjudicated at Rs.18,93,585.00 as against the original demand of Rs.94,90,264.00 in terms of the show cause-cum-demand notice.

39. The question which is begging consideration is whether the petitioners could be prejudiced or put in a worse off condition firstly by filing appeal before the CESTAT and secondly by filing declarations under the scheme?

40. In this connection we may refer to the maxim *reformatio in peius*. It is a latin phrase meaning a change towards the worse i.e., a change for the worse. As a legal expression it means that a lower court judgment is amended by a higher court into a worse one for those appealing it. In many jurisdictions, this practice is forbidden ensuring that an appellant cannot be placed in a worse position as a result of filing an appeal. When the above phrase is prefixed by the words ‘no’ or ‘prohibition’, which would render the maxim as *no reformatio in peius* or *prohibition of reformatio in peius*, it would denote a principle of procedure as per which using a remedy available in law should not aggravate the situation of the person who avails the remedy. In other words, a person should not be placed in a worse position as a result of filing an appeal. *No reformatio in peius* or *prohibition of reformatio in peius* is a part of fair procedure and thus by extension can also be construed as part of natural justice. It is not only a procedural guarantee but is also a principle of equity.

41. Supreme Court in *Jawal Neco Limited Vs. Commissioner of Customs*, **2015 (322) E.L.T. 561** emphasized this point when it held that appellant cannot be worse off by reason of filing appeal.

42. A Division Bench of Madras High Court in *Servo Packaging Limited Vs. CESTAT*, **2016 (340) E.L.T. 6** held as follows:-

“25. In the absence of any appeal filed by the department on the finding, relating to alleged clandestine removal of raw materials, the appellant cannot be put in a worse position, in their own appeal and in such circumstances, the principle of “*no reformatio in peius*” would come into play, which means that a person should not be placed in a worse position, as a result of filing an appeal. It is a latin phrase, expressing the principle of procedure, according to which, using the remedy at law, should not aggravate the situation of the one who exercises it.

26. Had the assessee not filed an appeal, it would not be placed in a situation of inviting an adverse order, on the aspect of clandestine removal. A party who files an appeal, expects that the appellate authority would only address the grounds of appeal, made against the order impugned, and the appellant

does not expect the appellate authority to go beyond the scope of appeal, and pass an order, adverse to his interest, in which event, it certainly creates a worse situation for the appellant/assessee, in his own appeal, than the order under challenge.

27. As rightly contended by the learned counsel for the appellant, instead of addressing the issue, as to whether, the appellate authority had acted beyond the scope of the appeal, and exceeded in his jurisdiction, the Tribunal passed an order, impugned before us, elaborating, as to how, adjudication has to be done, with reference to the aspect of clandestine removal of raw materials, which in our considered opinion, is jurisdictionally erroneous. On the facts and circumstances of the case, we hold that the directions issued by the appellate authority and that of the Tribunal, run contrary to the principle of “*no reformatio in peius*”.”

43. This decision was followed by the same High Court in *Rajaram Johra Vs. Commissioner of Customs (Airport & Cargo)*, **2019 (365) E.L.T. 424** in the following words:-

“11. The Court held that had the assessee not filed an appeal, they would not be placed in a situation of inviting an adverse order on the aspect of clandestine removal. A party, who files an appeal, expects that the appellate authority would only address the grounds of appeal made against the order impugned and the appellant does not expect the appellate authority to go beyond the scope of the appeal and pass an order adverse to his interest, in which event, it certainly creates a worse situation for the appellant/assessee in his own appeal than the order under challenge. Further, it was pointed out that the principal of “*no reformatio in peius*” would come into play, which means that a person should not be placed in a worse position, as a result of filing an appeal. It is a Latin maxim expressing the principle of procedure according to which, using the remedy at law, should not aggravate the situation of the one who exercises it.”

44. Reverting back to the facts of the present case, we are of the view that the initial show cause-cum-demand notice dated 17.01.1992 cannot be said to be in existence after the order in original was passed on 29.03.2006 which order has been accepted by the department. Quantification of dues had been done which was accepted by the department. On acceptance by the department, the demand raised *vide*

the show cause-cum-demand notice stood modified (reduced) in the following manner:-

1.	M/s. Jyoti Plastic Works Private Limited (Petitioner in Writ Petition No.818 of 2020)	Rs. 6,15,017.00
2.	M/s. Jai Plastics (Petitioner in Writ Petition No.828 of 2020)	Rs.10,12,375.00
3.	M/s. N. D. Patel (Petitioner in Writ Petition No.821 of 2020)	Rs. 2,66,193.00
	Total	Rs.18,93,585.00

45. These amounts would now be the tax dues of the petitioners and this position would not change because of the subsequent order of the CESTAT dated 30.10.2017 setting aside the order in original dated 29.03.2006 for the purpose of deciding afresh the whole issue on merit, limitation etc. apart from quantification. As a technicality the order in original dated 29.03.2006 had to be set aside. Since the figures i.e., demand amounts in the order in original dated 29.03.2006 have been accepted by the respondents, it is those figures which would be material and not the figures mentioned in the show cause-cum-demand notice. Petitioners cannot be put in a worse off condition or the situation faced by them cannot be aggravated because they had availed the remedy of appeal or had sought relief under the scheme which is a beneficial one.

46. Thus having regard to the objective of the scheme, in a case of this nature, a reasonable and pragmatic approach has to be adopted so that a declarant can avail the benefits of the scheme; a declarant who seeks benefit under the scheme cannot be put in a worse off condition than he was before making declaration under the scheme. That would defeat the very purpose of the scheme.

47. In the light of the above, we have no hesitation to hold that the disputed tax dues in respect of the three petitioners would be as follows:-

1.	M/s. Jyoti Plastic Works Private Limited (Petitioner in Writ Petition No.818 of 2020)	Rs. 6,15,017.00
2.	M/s. Jai Plastics (Petitioner in Writ Petition No.828 of 2020)	Rs.10,12,375.00
3.	M/s. N. D. Patel (Petitioner in Writ Petition No.821 of 2020)	Rs. 2,66,193.00
	Total	Rs.18,93,585.00

48. This Court had already clarified that payments made by the petitioners following issuance of forms SVLDRS-2 and SVLDRS-3 would be subject to outcome of the writ petitions and if the petitioners succeed, they would be entitled to the refund of excess payment made without having to institute separate proceedings.

49. Thus having regard to the discussions made above and taking an overall view of the matter, the tax dues in respect of each of the three petitioners shall be treated as Rs.6,15,017.00, Rs.10,12,375.00 and Rs.2,66,193.00 respectively, Rs.18,93,585.00 collectively, and payments made by the petitioners in excess shall be refunded to them within a period of eight weeks from the date of receipt of a copy of this judgment.

50. All the writ petitions are accordingly allowed. However, there shall be no order as to costs.

51. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J.)

(UJJAL BHUYAN, J.)