

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5664 of 2026

ITC Limited, through its authorized representative, Virginia House, 37 JL Nehru Road, Kolkata-700071.

... .. Petitioner/s

Versus

1. Commissioner of Central GST and Central Excise, Patna-1 3rd Floor CR Building (Annexe), Bir Chand Patel Path, Patna-800001.
2. Assistant Commissioner, CGST and CEX Division Bhagalpur, Ground Floor, Kiran Vatika, ShitlaSthan Road, Tilakmanjhi, Bhagalpur-812001.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5870 of 2026

ITC Limited through its Authorized Representative, Satya Prasad Aged about 40 yeras, Gender Male, Son of P Manamtha Rao resident of 07 Main Road Gudari PO and PS-Gudari, Rayagada, Odisa Pincode-765026, and presently working as Branch Manager, Patna Marketing Branch ITC Patna District Patna.

... .. Petitioner/s

Versus

1. Commissioner of Central GST and Central Excise, Patna-I 3rd Floor CR Building (Annexe), Bir Chand Patel Path, Patna - 800001.
2. Assistant Commissioner, CGST and CEX Division Bhagalpur Ground Floor, Kiran Vatika, ShitlaSthan Road, Tilakmanjhi, Bhagalpur-812001.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5962 of 2026

ITC Limited through its Authorized Representative Satya Prasad, Aged about 40 years, Gender Male, Son of P Manamtha Rao, Resident of 07 Main Road Gudari, PO and PS Gudari, Rayagada Odisa Pincode 765026, and presently working as Branch Manager, Patna Marketing Brach ITC Patna, district Patna.

... .. Petitioner/s

Versus



1. Commissioner of Central GST and Central Excise Patna - I, 3rd Floor CR Building (Annexe), Bir Chand Patel Path, Patna- 800001.
2. Assistant Commissioner, CGST and CEX Division Bhagalpur Ground Floor, Kiran Vatika, Shitla Sthan Road, Tilkamanjhi, Bhagalpur- 812001.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 5664 of 2026)

For the Petitioner/s : Ms. L. Mathili, Advocate
Mr. Sachindra Kumar Tiwary, Advocate
Ms. Nivedita R. Mehta, Advocate
Mr. Manisha Shandily, Advocate

For the CGST&CX : Mr. Anshuman Singh, Sr. SC, CGST & CX
(In Civil Writ Jurisdiction Case No. 5870 of 2026)

For the Petitioner/s : Mr. Sachindra Kumar Tiwary, Advocate

For the Respondent/s : Mr. Anshuman Singh, Sr. SC, CGST & CX

(In Civil Writ Jurisdiction Case No. 5962 of 2026)

For the Petitioner/s : Mr. Sachindra Kumar Tiwary, Advocate

For the Respondent/s : Mr. Anshuman Singh, Sr. SC, CGST & CX

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-04-2026

Heard Ms. L. Mathili, learned counsel for the petitioners
and Mr. Anshuman Singh, learned counsel for the Central Excise
in all the three writ applications which have been taken up together
for consideration.

2. In C.W.J.C. No. 5664 of 2026, following reliefs have
been prayed for:-

“A writ in the nature of *certiorari* to quash and cancel the
Show Cause Notice No. V (48) 34/B’ pur/SCN-
Cell/Adjn/2008/12868 (hereinafter referred to as the



‘SCN/impugned SCN’) dated 28.11.2008, SCN No. V(48)(15)35-Adjn/2008/ 12876 dated 24.12.2025 and SCN No. V(48)39/B'pur/SCN-Cell/Adjn/2008/ 12864 dated 28.11.2008 respectively.”

3. In other two writs, similar prayers have been made with only difference with respect to the SCN No.

Brief Facts of the Case

4. The brief facts of the case are taken from C.W.J.C. no. 5664 of 2026. The petitioner M/s ITC Ltd. Munger is a manufacturer of cigarettes having its factory at Munger. It manufactures Packaging Materials like Shells, Slides; Printed Sheets, Gold Printed Sheets, Hinged Lid Packets (HLPs) and Card Board Outers (CBOs) also. These packaging materials are cleared by the petitioners to its cigarette factories for captive consumption in the manufacture of cigarettes. Both classification and valuation of the aforesaid goods are the subject matter of dispute over last several years. Due to dispute in classification and valuation, the assessment during disputed period was made provisionally and pursuant to the directions issued under various orders from time to time, the provisional assessments for the period 1982-83 to 2004-05 were taken up for finalization by the Deputy Commissioner of Central Excise, Bhagalpur. The impugned order is related to



finalization of provisional assessment of Shells, Slides, Hinges Lid packet etc. manufactured by M/s ITC Ltd. (PPD), Munger and as per this order, the manufacturer- petitioners have been directed to deposit Rs.3,99,41,490/- for disputed period.

5. This Court has noticed that in the writ applications, there is no impugned order.

6. One of the manufacturing units of the petitioner Company is at Basudeopur, Munger in the State of Bihar. The petitioner obtained a Central Excise Registration vide Registration No. AAACI 5950 L XM 012.

7. The proximate cause for filing of these writ applications is the five notices of personal hearing served upon the petitioners on 27/29.12.2025. These notices pertain to the five SCNs. The details of those SCNs have been provided in paragraph '6' of the respective writ applications.

8. It is the case of the petitioners that immediately on receipt of the letter calling upon them to participate in the hearing, the petitioners addressed letter dated 03.01.2026, taking a preliminary objection saying that the adjudication of five SCNs, which were issued 17 to 36 years prior, were barred by limitation. It is submitted that it is not possible to respond to the SCNs due to non-availability of the complete papers with the lapse of time.



Submissions on behalf of the Petitioners

9. Learned counsel for the petitioners submits that the SCNs propose to demand differential duty by invoking the provisions of Section 11A of the Central Excise Act, 1944 (hereinafter referred to as the 'Excise Act') on the sole ground that the petitioners did not provide the clarification sought for in the letter dated 20.10.2008, issued merely a month prior to the impugned SCNs regarding the clarifications of fulfillment of conditions of the exemption notification in question.

10. In these writ applications, the petitioners have given the facts leading to passing of the provisional assessment orders, which were subject matter of challenge by the revenue as well as the petitioners. Attention of this Court has been drawn towards the order passed by the Deputy Commissioner, Central Excise Division, Bhagalpur in Annexure 'P/8' to the writ application. It is submitted that being aggrieved by the order of finalization of assessment to the limited extent that MODVAT credit of Rs. 114.44 lacs were denied, the petitioner had moved before the Commissioner of Central Excise (Appeals), Patna. The revenue challenged the order of finalization only with respect to valuation aspect. Both the appeals were disposed of vide order dated 23.01.2009 (Annexure 'P/9').



11. The appeal preferred by the petitioner was partly allowed, therefore, the petitioner challenged the order of the Commissioner (Appeal) before the CESTAT, Kolkata. The CESTAT, Kolkata allowed the appeal of the petitioner vide order no. 77224/2023 dated 09.10.2023 (Annexure 'P/10'). Thus, the issues relating to the rate of duty and valuation stood decided as per the modified order by the appellate authority.

12. Learned counsel for the petitioner submits that earlier when the petitioner was served with the letters, calling upon them to participate in the personal hearing, the petitioner responded to letters and vide letter dated 12th May 2009 Annexure 'P/18', it was informed to the Commissioner of Central Excise and Service Tax, Patna that a preliminary objection has been raised on behalf of the petitioners which is required to be adjudicated. Letter dated 16th February, 2009 written by the petitioners to the Commissioner, Central Excise and Service Tax has been referred to. In the said letter, the petitioner had pointed out that several SCNs are not validly made and these are contrary to each other and should be recalled.

It is submitted that service of notice of personal hearing at this stage is required to be interfered with by this Court in its writ jurisdiction on the solitary ground that after such a long time



and inordinate delay, the competent authority cannot proceed with the show cause notices.

13. It is further submitted that the SCNs seek to demand differential duty of Rs. 58,55,50,768/- under Section 11A of the Excise Act read with Rule 9 (2) of the erstwhile Central Excise Rules 1944 and Rule 4 of the Central Excise (No. 2) rules 2001/ the Central Excise Rules 2022 along with the interest under Section 11AB and penalty under Section 11C and Rule 173Q of the Central Excise Rules 1944 and Rule 25 of the Central Excise Rules 2001/2002. According to the petitioners, the proposed demand of differential duty arises out of a unilateral denial of exemption claimed under notification no. 67/82-C dated 28.02.1984 on the clearances of shells and slides made during the period 28.02.1982 to 28.02.1994.

14. Learned counsel for the petitioner has requested this Court to go into not only the grounds of delay in taking up the adjudication process but also into the merits of the SCNs as it has been contended that the SCNs seeking to demand differential duty is even otherwise not sustainable.

15. In course of hearing, learned counsel for the petitioners have relied upon the judgment of the Hon'ble Bombay High Court in the case of **GODREJ & BOYCE MFG. Co. LTD.**



Vs. Union of India reported in **(2023) 5 Centax 30 (Bom.)** and on the judgment of the Hon'ble Calcutta High Court in the case of **Surendralal Girdharilal Mehta vs. Union of India** reported in **2018 (364) E.L.T. 81 (Cal.)**. The submission is that in both the judgments, the Hon'ble High Court of Bombay and Hon'ble High Court of Calcutta have been pleased to interfere with the show cause notices and the adjudication proceedings which were commenced after long delay. It is submitted that the competent authority, who had issued the notices for personal hearing, is not likely to take into consideration the pleas of the petitioners which have been raised in this Court, therefore, this Court may invoke its extraordinary writ jurisdiction to interfere with the show cause notices.

Submissions on behalf of the Respondents

16. Mr. Anshuman Singh, learned counsel for the Central Excise has submitted that the show cause notices were issued in the year 2008 and thereafter, several dates for personal hearing was fixed which would be evident from the correspondences enclosed with the writ applications. Attention of this Court has been drawn towards Annexure 'P/12' onwards. It is submitted that in its letter dated 31st December, 2008, the petitioners while reading a surprise on receipt of the SCNs



submitted *inter alia* that they had forwarded the subject SCNs to their legal counsel for advice on the subject and they would require at least two months for collecting the necessary data and obtain legal opinion on the subject.

17. It is pointed out that Annexure 'P/13' is a letter granting personal hearing to the petitioners which was responded to vide Annexure 'P/14'. In Annexure 'P/14', the petitioners pointed out that there are some contradiction in the stand of the department and they raised a preliminary objection that the SCNs are invalid. Instead of participating in the hearing, they called upon the department to provide their stand and made it clear that once the final stand of the department is communicated in writing, they will respond to the remaining SCNs and in absence of any such communication, they had no obligation nor it was possible for them to respond.

18. Learned counsel for the Central Excise submits that Annexure 'P/14' is another letter of the department by which the petitioners were informed that their defence reply has not been received. It is submitted that the petitioners are, though taking a plea of delay on the part of the department in passing a final order on the SCNs but the fact remains that the petitioners kept on seeking adjournment one after another. The CESTAT, Kolkata



order (Annexure 'P/10') came to be passed on 09.10.2023 only. The petitioners have brought on record those correspondences on their own which would show that several communications were made to the petitioners asking them to appear. Annexure 'P/18' which is a letter of the learned Advocate of the petitioners issued on 12th May, 2009 has been placed before this Court to submit that the petitioners took a stand that it would not be possible for them to participate in the proceeding unless the preliminary objection raised in the letter dated 16th February, 2009 is answered. A plea was also taken by the learned counsel for the petitioners that the date fixed for personal hearing is not suitable since on account of court vacation the lawyer had already made travel plans much in advance, which could not be changed.

19. Learned counsel submits that so far as the judgment of the Hon'ble Bombay High Court in case of **GODREJ & BOYCE MFG. Co. LTD.** (supra) is concerned, on a bare perusal of paragraph nos. '5', '6' and '7' of the said Judgment, it would appear that in the said case the petitioners had appeared before the competent authority, attended the personal hearing before respondent no. 3 and made their submissions. Only after the submissions of the petitioners were rejected, they chose to move the Hon'ble High Court in its writ jurisdiction.



20. It is further submitted that in case of **Surendralal Girdharilal Mehta (supra)**, the Hon'ble Calcutta High Court came across the facts that there had been an inordinate delay in proceeding with the show cause notice causing immense prejudice to the petitioners. The authorities in the said case had failed to disclose or supply to the petitioners' copies of the relevant documents and in the said case, there was no fact showing that the delay was in any way attributed to the petitioners.

21. Learned counsel for the Central Excise submits that the Hon'ble Supreme Court has put a word of caution in the matter of citing of their Lordship's judgment in the case of **Bharat Petroleum Corporation vs. N.R. Vairamani and Anr.** reported in **(2004) 8 SCC 579** (para '9'). In this regard, the submission of Central Excise Counsel is that the facts of the present case are clearly distinguishable. It would show that the petitioners had not appeared despite notices for personal hearing and kept on writing letters only and the provisional assessment order was challenged, the litigation went on till 09.10.2023 until CESTAT, Kolkata passed the order. Thus, delay is not solely attributable to the department. The petitioner, who is seeking to invoke the extraordinary jurisdiction of this Court, may not be



entitled to the discretionary relief of this Court where it is shown that the petitioner has tried at every stage to avoid the hearing.

22. Learned counsel for the Central Excise has relied upon the judgment of the Hon'ble Supreme Court in the Case of **J. Sri Nisha Vs. Special Director, Adjudicating Authority, Directorate of Enforcement (2026 INSC 309)** which was a case in which a writ petition was filed by the appellants assailing the show cause notices issued by the Adjudicating Authority under the provisions of the Foreign Exchange Management Act, 1999 (in short referred to as FEMA). The learned Single Judge dismissed the writ petition and an Intra Court appeal preferred against the said single judge judgment also failed. Learned counsel submits that in the said case, when the matter travelled to the Hon'ble Supreme Court, the Hon'ble Supreme Court has, upon discussion and analysis of the facts and the statutory framework governing the dispute, in paragraph '32', observed *inter alia* that interference at the stage of SCN is permissible only in exceptional circumstances, such as, where the notice suffers from patent lack of jurisdiction, reflects non-application of mind and issued with a pre-determined or pre-meditated approach. In such circumstances, the High Court would be justified in exercising its jurisdiction



under Article 226 of the Constitution of India. It is his submission that in the present case, no such ground has been made out.

23. So far as the other contentions of learned counsel for the petitioners is concerned, it is submitted that it would not be an appropriate stage for this Court to go into the case of the department as shown in the show cause notices. Learned counsel submits that this Court sitting in its writ jurisdiction may not like to delve into the issues as to whether the SCNs demanding differential duty is contrary to the provisions of the Act and the Rules. The issues relating to the proposed demand of differential duty may be left to be decided by the competent authority only. The petitioner may submit their stand before the competent authority on all such grounds which are available to them.

Consideration

24. Having heard learned counsel for the petitioner(s) and learned counsel for the Central Excise as also on going through the pleadings available in the writ applications, we have noticed that in this case, the petitioners are seeking quashing of the SCNs of five years which were served upon the petitioners admittedly in the year 2008.



25. This Court would, therefore, extract the show cause notice present at Annexure 'P/11' (page 106 of the writ petition) as under:-

"भारत सरकार

केन्द्रीय उत्पाद शुल्क एवं सेवा कर आयुक्तालय , पटना
तृतीय मंजिल, केन्द्रीय राजस्व संलग्नक भवन, वीर चन्द पटेल पथ,
पटना-800001
C.No. V (48) 39/B Pur/SCN-Cell/Adjn/2008/12864

To

M/s I.T.C. Ltd.,
(Printing & Packaging Division),
Basudeopur,
Munger- 811201 (Bihar)

Notice to Show Cause for Demand-cum-Interest-cum-Penalty under Sections 11A, 11AB, 11AC of the Central Excise Act, 1944

Whereas it appears that M/s I.T.C. Ltd., (Printing & Packaging Business Division), Basudeopur, Munger [hereinafter referred to as the said Assessee, for brevity] having Central Excise Registration No. AAACI 5950 L XM 012, engaged in the manufacture of excisable goods, namely, Shells, Slides, Hinged Lid Pack, etc. from Paper or Paper Board and CBO falling presently under different Chapter Heading No. 48 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the said Tariff Act, for brevity) and then falling under T. I No. 17 (4) before introduction of the said Tariff Act, have contravened the provisions of the erstwhile Notification No. 67/ 82-C.E., dated 28.02.1982 (as amended) and the Notification No. 135/ 89-C.E., dated 12.05.1989 (as amended), as they have availed the benefit of exemption for payment of Duty at concessional rate for clearances of Shells, Slides, Hinged Lid Pack, etc., without fulfilling the Conditions laid down under the above said Notifications.

2. During the course of the finalization of the Provisional Assessment, Shells & Slides, Hinged Lid Pack etc. have been classified under the T. I. No. 17 (4) during the period from 1982 to 27.02.1986 (before the introduction of the new Tariff Act). After introduction of the said Tariff Act, these products have been classified under the Chapter sub-Heading No. 4818.90 w.e.f. 28.02.1986 to 29.02.1988 and under the



Chapter sub-Heading No. 4823.90 w.e.f. 01.03.1988 onwards. At the time of the finalization of the Provisional Assessment the said Noticee were requested to calculate Duty amount at the applicable rate of Duty supported with the Notification, if any, regarding effective rate of Duty. The said Noticee claimed benefit for concessional rate of Duty for the items classifiable under the T. I. 17 (4) and under Chapter 48 and in support of their claim they submitted different effective rate Notifications as applicable from time to time. The Provisional Assessment for Chapter 48 items has been finalized quantifying and demanding the Central Excise Duty amounting to Rs.2,98,14,009.96 (Rupees two crore ninty eight lakh fourteen thousand nine & ninety six paise only) considering these effective rate notifications.

3. Notification No. 67/ 82- C.E., dated 28.02.1982 (as amended) and Notification No. 135/89- C.E., dated 12.05.1989 (as amended), from time to time, have been taken into consideration while finalizing the Provisional Assessment. These notifications were applicable subject to the full-fillment of certain Conditions laid down therein.

4. Vide the Notification No. 67/82- C.E., dated 28.02.1982 as amended by Notification No. 48/83- C.E., dated 01.03.1983, Notification No. 151/83- C.E., dated 13.05.1983 and Notification No. 79/86- C.E., dated 10.02.1986, articles of Paper or Paper Board falling under the erstwhile T. I. No. 17 (4) of the first schedule to the Central Excise & Salt Act 1944, and now Chapter 48 of the Schedule of the said Tariff Act, had been the exempted from Duty of Excise leviable thereon as was in excess of 15% ad-valorem subject to the conditions:

(a) that appropriate Duty of Excise or additional Duty leviable thereon under Section 3 of the Customs Tariff Act, 1975, as the case may be, has already been paid in respect of the Base Paper or Base Paper Board in their manufacture.

(b) that the manufacturer does not avail the special procedure prescribed under Rule 56A of Central Excise Rules, 1944 (hereinafter referred to as the said earstwhile Rules, for bravery) in respect of Duty paid in the Base Paper or Base Paper Board.

Thus, it is clear that only when the above two Conditions are satisfied 15% of ad-valorem rate of Duty on these items are applicable.

5. Vide the Notification No. 135/89 C.E., dated 12.05.1989 as amended by Notification No. 30/ 93- C.E., dated 28 02.1993; Notification No. 20/94- C.E., dated 01.03.1994, Notification No 18/95- C.E., dated 16.03.1995 and Notification No 19/96-



C.E., dated 23.07.1996, goods falling under the Chapter sub-Heading No. 4823.90 of the Schedule to the said Tariff Act, other than the products consisting of sheets of Paper or Paper Board impregnated, coated or covered with plastics, compressed together in one or more operations, had been exempted from Duty of Excise leviable thereon as was in excess of the amount calculated @ 12% ad-valorem. This effective rate Notification excludes the products consisting of sheets of Paper or Paper Board impregnated, coated or covered with plastics, compressed together in one or more operations.

6. The said Noticee were asked vide the letter C. No. V (24) 25- Tech/ BGP/08/3026 dated 20.10.2008 to submit the following clarifications in respect of raw materials, i.e., Paper or Paper Board used for the manufacture of Shells, Slides, HLP, etc. for the purpose of verifying whether the specific conditions laid down under the Notification No. 67/82-C.E., dated 28.02.1982, as amended and the Notification No. 135/89- C.E., dated 12.05.1989, amended, have been fulfilled by the said Noticee:

(a) Whether they had manufactured Shells, Slides, etc. classifiable under the said Tariff Item no. 17 (4) for the period 1982 to 27.02.1986 from Duty paid paper or paper boards and if so, documentary evidences such as Invoices in respect of Paper or Paper Board showing Duty paying particulars be furnished.

(b) Whether they had not availed the special procedure under Rule 56 A of the said erstwhile Rules during the above mentioned period.

(c) Whether products, i.e., Shells, Slides, HLP, etc., manufactured by them and classifiable under Chapter 48 after 28.02.1986, consists of sheets of Paper or Paper Board impregnated, coated or covered with plastics, compress together in one or more operations.

7. The said Noticee have not submitted any clarifications as yet. Thus, it appears that the said Noticee have mislead and suppressed the correct rate of Excise Duty by claiming the benefit of above mentioned effective rate notification without fulfilling the specific conditions laid down therein and thus the said Noticee are not eligible for availing exemptions for effective rate Notification and are thus required to pay Duty at the Tariff rate as applicable from time-to-time.

8. Therefore, the said Noticee is hereby called upon to show cause to the Commissioner, Central Excise & Service Tax, Patna [having his office situated at the 3rd Floor, Central



Revenue Annexee Building, Bir Chand Patel Path, Patna-800 001], within thirty (30) days of the receipt of this Notice as to why:

(a) The aforesaid short paid Central Excise Duty amounting to Rs.56,65,16,566/-(Rupees Fifty-six crores, sixty-five lakhs, sixteen thousands, five hundred and sixty-six only) [as detailed in the Annexure- 'A'] should not be demanded and recovered from them under the provisions of Section 11A of the Central Excise Act, 1944 read with Rule 9 (2) of the erstwhile Central Excise Rules, 1944 and now Rule 4 of the Central Excise Rules, 2002.

(b) The Interest amount, at the appropriate rate, on the said amount, should not be charged and recovered from them, under the provisions of Section 11AB of the Central Excise Act, 1944.

(c) Penalty should not be imposed upon and recovered from them under the provisions of Section 11AC of the said Central Excise Act, 1944 and Rule 173Q of the erstwhile Central Excise Rules, 1944 or, as the case may be, Rule 25 of the Central Excise (No. 2) Rules, 2001/Central Excise Rules, 2002.

9. The said Noticee is further directed to produce all evidences upon which they intend to rely upon in support of their defence. The said Noticee is further required to state as to whether they would like to be heard in person, before the case is adjudicated. If no mention of Personal Hearing is made in their written explanation, it would be presumed that they do not desire the same. If no cause is shown against the action proposed to be taken within the stipulated period or they do not appear before the Adjudicating Authority, when the case is posted for hearing, the case will be decided on the basis of the evidences and materials on record.

10. This Notice is issued without prejudice to any other action that may be taken against the said Noticee under the Central Excise Act, 1944 or the Rules made there under or under any other Law for the time being in force in India.

Enclo: As above.

[M.S. BADHANI],
COMMISSIONER”

26. Since the year 2008, the petitioner did not challenge the SCNs before any competent court/forum. After 18 years thereof, the petitioners are approaching this Court for issuance of



an extraordinary writ in the nature of a writ of certiorari to quash and cancel the SCNs. The delay and laches on the part of the petitioner in filing of the writ application is apparent on the face of it.

27. We have noticed the contention of learned counsel for the petitioner(s) that the SCNs pertain to the period which are nearly 17 years old. But the fact remains that after receipt of SCNs, the petitioner was given opportunity to respond and the respondent fixed several dates for hearing. For one reason or another, the petitioner did not participate in the hearing. In such circumstances, *prima facie*, we agree with the submissions of the learned counsel for the Central Excise that the delay in the adjudication cannot be solely attributed to the department.

28. Although, the learned counsel for the petitioner has invited this Court to enter into the merit of the show cause notices on the ground that the show cause notices are demanding differential duty which are not sustainable as the issues have been settled by the order passed by the CESTAT, Kolkata, the facts remain that CESTAT, Kolkata order (Annexure 'P/10') is dated 09.10.2023 and the submission of the petitioner is required to be considered by the competent authority at first instance.



29. We are of the considered opinion that this Court being a Writ Court need not enter into the validity of the SCNs at this stage as certain issues of facts are required to be gone into with reference to the materials which may be placed before the competent authority. It would be in the domain of the competent authority to examine those documents, adjudicate the facts and then apply the law in the facts of the case. This Court would, therefore, refrain from entering into the merit of the contentions with regard to the demand as proposed in the SCNs.

30. We have gone through the judgments of the Hon'ble Bombay High Court and the Hon'ble Calcutta High Court. We are reminded of the judgment of the Hon'ble Supreme Court in case of **Bharat Petroleum Corporation (supra)**. Paragraph '9' thereof reads as under:-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain



and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*² (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,...”

31. It is apparent from a bare reading of the facts of the two judgments cited at the Bar that those have been rendered in completely different facts. In the case of Bombay High Court, the petitioners had participated in hearing whereafter an adjudicatory order was passed by the competent authority which was under challenge. This Court does not have that privilege because the petitioner has yet not appeared before the competent authority to participate in the personal hearing. In the case before the Hon’ble Calcutta High Court, the facts were completely different. The petitioners in the said case had requested the department to supply certain documents but those were not supplied. That was not the case in which date of personal hearing was fixed by the department.

2. 1951 AC 737 : (1951) 2 All ER 1 (HL)



32. In our considered opinion, the writ applications as framed cannot be entertained. The petitioner(s), if so advised, may appear before the competent authority within four weeks from today and make their submissions. All submissions are left open to the parties.

33. It is, however, made clear that this Court has not entered into merit of the case and no part of the observations of this Court shall prejudice either of the parties.

34. These writ applications stand dismissed.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

devendra/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	25.04.2026
Transmission Date	25.04.2026

