**(1988) 10 BOM CK 0039**

**Bombay High Court**

**Case No:** Writ Petition No. 402 of 1984

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| Ballarpur Industries Ltd. | APPELLANT |
| Vs | |
| Union of India | RESPONDENT |

**Date of Decision:** Oct. 11, 1988

**Acts Referred:**

- Central Excise Rules, 1944 - Rule 173C, 173G, 173G(2), 173G(2A), 173G(3)
- Central Excises and Salt Act, 1944 - Section 34A, 36A, 9, 9(1)
- Constitution of India, 1950 - Article 226
- Customs Act, 1962 - Section 113, 42(1), 46(4)

**Citation:** (1991) 51 ELT 13

**Hon'ble Judges:** H.W. Dhabe, J; G.C. Loney, J

**Bench:** Division Bench

**Judgement**

Dhabe, J.

The claim of the petitioner company in the instant writ petition is that it is entitled to the benefit of a concessional rate in respect of sale of white printing paper manufactured by it as per the notification of the Central Government issued in exercise of the powers conferred upon it under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 (for short, "the Rules") framed under the provisions of the Central Excises and Salt Act, 1944 (for short, "the Act"). The petitioners have, therefore, prayed for quashing of the orders passed by the Assistant Collector, Central Excise, Division Chandrapur, having his office at Nagpur referred to in Exhibit ''M'' to the petition and also have asked for a writ of prohibition or any other appropriate writ, order or direction against him from proceeding with the show-cause notices mentioned in the said Exhibit ''M'' to the petition.

2. Briefly, the facts are that the petitioner No. 1 is a private limited company registered under the provisions of the Companies Act, 1956. The petitioner No. 2 is a share-holder of the said company. The petitioner No. 1 is a leading manufacturer of

various qualities of paper having its factory at Ballarpur in the district Chandrapur. Since the paper was a controlled and/or essential commodity under the Essential Commodities Act, 1955, in order to maintain and to increase supplies of paper and for securing its equitable distribution and availability at fair prices, the Central Government in the exercise of the power u/s 3 of the Essential Commodities Act, 1955, issued an order known as "Paper (Regulation of Production) Order, 1978" (for short, "the Paper Regulation Order").

3. The expression "white printing paper" is defined under Clause 2(i) in the Paper Regulation Order. In regard to the said white printing paper, Clause 3(a) of the said Order provided that every manufacturer should manufacture in respect of every month commencing on and from the 1st day of April 1978, and every quarter commencing on and from the 1st day of April 1978, white printing paper upto the extent of at least 30 per cent. of the total quantity of paper and paper boards manufactured by him during the month or the quarter as the case may be. Clause 6 of the said Order prohibited the manufacturer from manufacturing and other variety of paper tinted with any colour with which white printing paper is required to be tinted under sub-clause (1) of Clause 5. Clause 7 provided that the manufacturer should stamp on very ream of paper and every gross of paper board manufactured by him, the ex-factory sale price and retail sale price of such paper or paper board. There were some amendments made to the Paper Regulation Order by an order issued on 16-10-1979 with which we are not directly concerned in the instant writ petition except that in Clause 2(3)(a) of the aforesaid Order it was provided that white printing paper should be manufactured to the extent specified in the said clause or to the maximum extent of the installed capacity capable of utilisation for the manufacture of writing and printing paper for the month or the quarter, as the case may be, whichever is lower.

4. After Paper Regulation Order was issued, the Central Government issued another Order on 3-6-1979 known as the Paper (Control) Order, 1979 (for short "the Paper Control Order"), with the same object of maintaining and increasing supplies and for securing equitable distribution and availability of printing and writing paper. The definition of the expression "white printing paper" in Clause 3(d) is similar to the definition of the said expression in the Paper Regulation Order. Clause 4 of the above Paper Control Order which is pressed into service in this writ petition enabled the Central Government to require any manufacturer by issuing orders to sell white printing paper and cream laid or wove paper or any of such varieties of paper to such persons or class of persons and on such terms and conditions, as may by specified in the Order. The ex-factory price admissible to the manufacturer for white printing paper was fixed at Rs. 3,000/- per metric tonne under Clause 6 of the said Order. The said Paper Control Order also came to be amended on 16-10-1979 in which in the definition clause of white printing paper given in Clause 2(b) a qualification relating to weight of 60 grammes per square metre was laid down. Clause 6A was inserted by amendment to carve out certain exceptions to the

retention prices prescribed in Clause 6.

5. In the light of the above provisions of the Paper Regulation Order and the Paper Control Order it is submitted on behalf of the petitioners that it is obligatory upon the paper manufacturer to produce 30 per cent. of the total production of paper and paper-boards as white printing paper and to dispose of the said paper as per the directions issued by the Central Government under Clause 4 of the Paper Control Order. It is further submitted that by issuing various orders under Clause 4, the Central Government or its delegate under Clause 4, has directed the petitioner No. 1 to sell white printing paper to the various institutions for various educational purposes such as for text books, exercise books and University Examinations etc. whose names are given in each of such orders. The petitioner further submit that it is in accordance with the said orders by the authorities concerned that the white printing paper, which is the subject matter of the instant writ petition, is disposed of or sold by the petitioners.

6. It may then be seen that as per the notification dated 16-3-1976, which the Central Government has issued in exercise of its power under Rule 8(1) of the Rules, a concessional rate of excise duty is prescribed in respect of the goods specified in the said notification and falling under Item 17 of the First Schedule of the Act, thereby exempting the manufacturers from payment of full duty prescribed for the goods under the Act. Perusal of the aforesaid notification dated 16-3-1976 would show that at serial No. 1 in regard to white printing paper a concessional rate of excise duty of 5.5% ad valorem is provided if the manufacturer fulfilled the two conditions given in column No. 4 of the Table annexed to the notification dated 16-3-1976. The said conditions are that the proper officer should be satisfied that such paper is supplied (i) to the Directorate General of Supplies and Disposals, or (ii) for various educational purposes (Such as for text book/exercise books and University Examinations) at the actual wholesale case price, that is to say the wholesale factory price, excluding all Central and State levies, not exceeding Rs. 2,750/- per metric tonne.

7. The case of the petitioners on the basis of the above notification dated 16-3-1976 is that as per the orders of the Competent Authorities of the Central Government the petitioners have supplied white printing paper for the purpose mentioned in Clause (ii) referred to above, i.e. for the educational purposes. It appears that according to the excise authorities for claiming concessional rate under Item No. 1 of the notification dated 16-3-1976 about white printing paper the condition is that it must be actually used or consumed by the institutions to which it is sold. However, according to the petitioners, as per the condition in column 4 of Item No. 1 of the Table in the notification dated 16-3-1976, the petitioners are entitled to the concessional rate of excise duty only on supplying the white printing paper to the institutions for educational purposes as per the directions issued by the Competent Authorities of the Central Government in this regard. The learned counsel for the

petitioners has brought to our notice entry at serial No. 3 in the Table annexed to the above notification dated 16-3-1976 in respect of printing and writing paper to show the difference in the language used in column 4 of the said entry. According to him, the requirement under the said entry is that the paper should be actually used for claiming a concessional rate in regard to printing and writing paper whereas the language of the entry No. 1 referred to above shows that the condition therein is that such white printing be supplied to the customers referred to therein.

8. At this stage, for proper understanding of the controversy in this petition, it is necessary to notice the "Self Removal Procedure" which was introduced by amendment of the Rules by the notification dated 14-7-1969 which has inserted in the Rules Character VII-A on removal of excisable goods on determination of duty by producers, manufacturers or private warehouse licensees. The petitioners have been following the said self-removal. It may be seen that prior to the introduction of the self-removal procedure there was staff of the Excise Department present in the factory itself. When the said staff was satisfied about the excise duty payable upon the goods in question, the excisable goods were allowed to be removed from the factory under the gate-passes which were in the prescribed proforma prepared for the said purpose and which had to be countersigned by the officer of the Excise Department, deputed in the factory before the excisable goods were removed. However, after the introduction of the self-removal procedure all the responsibility about the due determination of the excise duty was cast upon the manufacturer although as per Rules 173B and 173C he was required to submit to the Department the classification list of the goods and also the price list and to get the same approved by the competent Excise authorities. As to the actual removal of the goods the procedure was laid down in Rule 173G of the Rules. The procedure envisaged therein was that the manufacturer used to get the gate-passes in the printed form already countersigned by the competent Excise authority and it was the duty of the manufacturer to fill in the said gate-passes and to submit the same to the proper officer of the department along with the return and other necessary documents as provided in sub-rule (2A) of Rule 173G of the Rules.

9. It is not dispute that it is in accordance with the self-removal procedure that the white printing paper, which is the subject matter of this petition, was removed by the petitioners. It is further not in dispute that the petitioners have filed the returns and submitted the gate-passes along with the return to the competent Excise Authority as provided in sub-rule (2A) of Rule 173G of the Rules. The whole difficulty has arisen in the instant case because in the gate-passes in the printed form filled in at the time of removal of the white printing paper from the factory of the petitioners and which were submitted to the competent Excise authority in accordance with the provisions of sub-rule (2A) of Rule 173G of the Rules it was mentioned that the removal of the goods was to "Self" meaning thereby to petition No. 1. It is because of such self-removal under the various gate-passes in question in the instant writ petition that the show cause notices were issued to the petitioners by the Assistant

Collector, Central Excises Division, Chandrapur, at Nagpur, to show cause as to why the concessional rate which was claimed by the petitioners for white printing paper under the aforesaid notification dated 16-3-1976 should not be disallowed, because, according to the Department, the gate-passes did not show that the white printing paper was used for the purposes mentioned in the said notification.

10. The petitioners have filed as Exhibit ''M'' a tabular statement giving the details of the show cause notices issued to them by the Assistant Collector, Central Excise Division, Chandrapur. The said Tabular statement in Exhibit ''M'' shows that all the show cause notices relate to the period from February 1982 to December 1983. The said Exhibit ''M'' shows that there are 16 shows cause notices issued to the petitioners during the above period and that actually the orders are passed by the aforesaid Assistant Collector, Central Excise, in six of them referred to at serial Nos. 1 to 6 of the said Exhibit ''M''. Since all the show cause notices and also the six orders passed by the aforesaid Assistant Collector are according to the petitioners identical, they have filed only a specimen copy of the show cause notice dated 3/5-8-1982 as Exhibit ''J'' and a specimen copy of the order of the Assistant Collector dated 17-11-1983 in respect of the aforesaid show cause notice dated 3-8-1982 as Exhibit ''L'' to the petition.

11. The petitioners filed their replies to the show cause notices issued to them. A specimen copy of the reply dated 24-11-1982 to the aforesaid show cause notice dated 31-8-1982 is filed with the petition as Exhibit ''K''. In reply to the said show cause notices the petitioners have submitted that although the gate-passes showed that the removal was to self, the white printing paper was actually sold and dispatched to the persons concerned as per the orders issued by the Competent authorities of the Central Government under Clause 4 of the Paper Control Order for being used for educational purposes as required by the notification dated 16-3-1976. As regards the meaning of "removal to self" in the gate-passes in question, it is stated in the reply to the show cause notice that the petitioners were following the commercial practice of mentioning "removal to self" in the gate-passes to avail of the bill discounting facility in the bank for retirement of the bills expeditiously although actually the goods were sold and despatched to the third parties. The case of the petitioners is that the above practice was communicated to the Excise Department by the letter dated 20-8-1976, a copy of which is supplied to us with the additional documents filed during the course of hearing of this petition. It is further submitted that there is also a reference to the said practice in one of the orders passed by the Assistant Collector of Central Excise, Nagpur, on 18-11-1980, a copy of which is also supplied at the time of hearing.

12. After the replies were submitted to the aforesaid show cause notices and personal hearing was allowed to the petitioners, the divisional staff was deputed by the Excise Department to make verification of all the relevant documents on 25-3-1983. However, according to the Department, the said staff could not verify the

relevant documents because of non-availability of allotment orders on that date. The Department, therefore, informed the petitioners that the said verification would be done on 6-7-1983, but on that date also all the relevant documents and in particular some of the allotment letters could not be verified, because the petitioners expressed their inability to furnish the same because of labour trouble and strike in their factory. The Department, therefore, asked the petitioners to make available all allocation letters to the visiting party on 5-9-1983, but on that also no such letters were made available for verification. It is the case of the petitioners that by the letter dated 2-9-1983, they had asked for time till the end of September 1983 for furnishing all the relevant documents because of the strike of the workers in the factory during August 1983 and had, therefore, asked for suitable date thereafter in October 1983. However, by the letter dated 3-9-1983, the Assistant Collector, Central Excise, Division Chandrapur, at Nagpur did not accede to the above request and fixed the case for verification on 5-9-1983. It is after 5-9-1983, that the Assistant Collector, i.e. the respondent No. 2, passed the orders nearabout the same time in regard to six show cause notices which are referred to at Serial Nos. 1 to 6 of Exhibit ''M''.

13. It is after these orders were passed in the aforesaid six show cause notices and it is before the orders could be passed in the remaining show cause notices at Serial Nos. 7 to 16 of Exhibit ''M'' that the petitioners have moved this Court for necessary relief in the matter. Although a specimen copy of the show cause notice dated 3-8-1982 and a specimen copy of the order of the Assistant Collector in regard to the said show cause notice are alone filed as Exhibits ''J'' and ''L'', in the tabular statement in Exhibit ''M'' the petitioners have included all the 16 show cause notices issued against them and the six orders passed in respect of the six show cause notices are referred to in Serial Nos. 1 to 6 of Exhibit ''M''. The petitioners seek relief in this petition that all the six orders referred to in S. Nos. 1 to 6 of Exhibit ''M'' should be quashed and set aside and that in respect of the show cause notices referred to in S. No. 7 to 16 the respondent No. 2 be prohibited from proceeding with the same.

14. The respondents have filed their returns which is sworn on behalf of the respondent No. 1. The respondents have in their return raised certain preliminary objections in regard to the maintainability of this petition as also in regard to the exercise of discretion by this Court under Article 226 of the Constitution of India. It is denied by the respondents that there is any commercial practice followed by the petitioners of showing in the gate-pass "removal to self" for the purpose of bill discounting facility and the same is communicated to them. It is denied that white printing paper was supplied to the persons who are covered by the notification dated 16-3-1976. It is also denied that the Paper Regulation Order and the Paper Control Order have nothing to do with the grant of concessional rate as per the notification dated 16-3-1976. On merits it is urged that the petitioners have failed to satisfy the respondent No. 2 that the white printing papers was sold to the persons

for educational purposes as per the allotment orders which, according to the petitioners, were issued to them by the Competent authorities of the Central Government. We may refer to the rival submissions in detail as and when they are dealt with. It is in the context of the above facts and circumstances that we have to dealt with the rival contentions raised by the parties in this writ petition.

15. Before proceeding to consider the contentions raised on merits, we may first dispose of the preliminary objections raised on behalf of the respondents. The learned counsel for the respondents has first urged before us that a common petition in respect of the various orders and the various show cause notices as shown in Exhibit ''M'' is not maintainable because the said show cause notices deal with separate periods in regard to which separate evidence has to be adduced by the petitioners and has to be considered by the respondent No. 2. It is, therefore, urged that the petitioners can continue only with one of the show cause notices referred to in Exhibit ''M'' and for the rest the petitioners will have to file separate be petitions if so advised.

16. It is true that the petitioners have clubbed all the show cause notices referred to in Exhibit ''M'' in one petition. It is also true that they relate to different periods and separate orders either are passed or will have to be passed in respect of the separate show cause notices. Normally, had we been really required to consider separate evidence or separate questions of fact in each of these show cause notices we would have directed the petitioners to make a choice to proceed with one of the show cause notices and to file separate writ petitions with regard to the others, if so advised. However, as we will hereafter show, the questions of fact and law which we have to deal with in this writ petitions are all common in all these show cause notices and hence they can conveniently be disposed of in this common petition without causing any inconvenience. It may be seen that the objection in regard to common petitions is not in that sense an objection to the jurisdiction or to the maintainability of the petitions as such. If the said objection is accepted, the course open to the petitioners is to proceed in regard to one of the several causes of action in this writ petition and to file separate petitions in regard to others. However, as rightly urged on behalf of the respondents, since the petitioners have clubbed different causes of action in one petition, we would direct the petitioners to pay additional sets of court fee for 15 more show cause notices which are impugned in this writ petition as per Exhibit ''M''. The petitioners should pay the additional sets of court fee within one week from the date of this order.

17. The next preliminary objection raised on behalf of the respondents is that the instant writ petition is premature. The said objection is really in respect of the show cause notices referred to Serial Nos. 7 to 16 of Exhibit ''M'' in regard to which no orders are passed by respondent No. 2. It may be seen that the relief claimed in regard to there show cause notices is that the respondent No. 2 should be prohibited from proceeding with the said show cause notices because the said show

cause notices are illegal and without jurisdiction. In essence, what is claimed is a writ of prohibition which if the High Court is satisfied can be issued to a judicial or a quasi-judicial authorities even before it enters upon the List before it if the proceedings before it are void or without jurisdiction. If the petitioners are entitled to the aforesaid relief, it cannot be said that the petition is premature. It may be seen that all the show cause notices in the present case are identical and six identical orders in regard to the six show cause notices are already passed by the respondent No. 2. The same questions arise for consideration in the remaining show cause notices also. It cannot, therefore, be said that no relief can be granted to the petitioners in these remaining show cause notices. Even otherwise, in the view which we are taking, it would be obligatory upon the respondent No. 2 to proceed in the matter of all the show cause notices including those in which he had passed orders in the light of the observations made by us in this judgment. We do not, therefore, think that effect can be given to the preliminary objection that the instant writ petition is premature in respect of the show cause notices at Serial Nos. 7 to 16.

18. The next preliminary objection is that the instant writ petition raised disputed questions of fact which cannot be decided in the writ jurisdiction of this Court under Article 226 of the Constitution of India. It may be seen in regard to this objection that in the view which we take in this matter, we would not be deciding any disputed questions of fact as such would be directing the respondent No. 2 to decide the same in the light of the view which we have taken in this judgment, It may, however, be seen that even in the writ jurisdiction of this Court under Article 226 of the Constitution, the High Court is competent to decide the question of fact unless they are so complex that they cannot appropriately be decided in a writ petition under Article 226. See Gunwant Karur v. Bhatinda Municipality AIR 1970 SC 862. It is only when there are complicated questions of fact which cannot be appropriately gone into in a petition under Article 226 that the petition may be rejected and the parties relegated to their other remedies. We do not, therefor, think that we can give effect to the above preliminary objection raised on behalf of the respondents that since the instant writ petition involves questions of fact, the parties should be relegated to their remedies.

19. We may at this stage point out that the learned counsel for the petitioners was seeking to satisfy us that the existence of an alternative remedy in the instant case was not adequate in the facts and circumstances of this case because there were two contrary views taken by the Appellate Tribunals on the question of interpretation of the time at Serial No. 1 in question relating to white printing paper in the exemption notification dated 16-3-1976, referred to above because although the requirement that the paper must be utilised for the purpose enumerated in the said item is not expressly used in the said item, one appellate Tribunal held that the said requirement is there relying upon such a requirement in the Item No. 3 in regard to the printing and writing paper in the said notification dated 16-3-1976,

whereas the other Appellate-Tribunal held that in Item No. 1 the said requirement is not there. There learned counsel appearing for the respondents has, however, categorically stated before us that he is not raising the preliminary objection that since there is an alternative remedy available to the petitioner, the instant writ petition should be dismissed in limine. It is not, therefore, necessary for us to deal with the said preliminary objection about the existence of an alternative remedy.

20. Lastly, the learned counsel for the respondents has raised a preliminary objection that since the petitioners have not filed the copies of all the orders and the show cause notices referred to in Exhibit ''M'' they are not entitled to claim any writ, order or direction from this Court in respect of the said order and the show cause notices. The submission is that the petitioners who pray for appropriate writs, orders or directions from the High Court must file copies of such orders or notices which they impugn before this Court under Article 226 of the Constitution of India. It is true that the order impugned must be filed with the petition under Article 226 of the Constitution of India as also held by the Supreme Court in the case of Surinder Singh Vs. Central Government and Others, . However, in the instant case, since all the orders and the show cause notices as averred by and as shown in the earlier paras are identical, the petitioners have filed a specimen copy of the show cause notices and the order although they relate to different periods. It may further be seen that the petitioners have given the detailed description and the particulars of the show cause notices and the orders in Exhibit ''M''. It may also be seen that all these show cause notices are in respect of the same subject matter, viz. whether the petitioner No. 1 is entitled to the concessional rate of excise duty as provided in the notification dated 16-3-1976. In these circumstances, the above objection is merely hyper technical. Moreover, the respondent themselves have placed on record the orders passed by the respondent No. 2 which are referred to at Serial Nos. 1 to 6 in Exhibit ''M''. We have thus on record the said orders. The said objection is, therefore, academic. We, therefor, do not think that the non-filling of all the orders and all the show cause notices by the petitioners would be fatal to them in this writ petition. The above objection raised on behalf of the respondents, therefore, cannot be given effect to.
11-10-1988.

21. Turning now to the merits of the controversy, it is urged on behalf of the petitioners that the questions whether the white printing paper was supplied to the persons referred to in the notifications dated 16-3-1976 or not cannot be decided merely from the entry "removed to Self" in the gate-passes on the basis of which clearance of the said white printing paper was made. It is submitted that when any show cause notice is issued, in this regard by the competent authority, it is open to the manufacturer to satisfy the said authority by leading other evidence to show that in fact the white printing paper was supplied to the persons referred to in the notification dated 16-3-1976. It is also submitted that even the Assistant Collector

who had issued the show cause notices has permitted the petitioner No. 1 to produce all relevant evidence in this regard to justify the concessional rate claimed by it.

22. It may be stated at this stage that although the respondent No. 2 has permitted the petitioner No. 1 to place on record all the relevant material and has not simply relied upon the contents of the gate-passes it is urged on behalf of the respondents that the declaration made by the petitioner No. 1 in the gate-passes in question is statutory declaration and is conclusive one. It is also urged on their behalf that the said declaration in the gate-passes amounts to the admission of the petitioner No. 1 by which he is bound by the principles of estoppel and/or approbate and reprobate and it is not open to it to explain or to vary such an admission. It may, however, be seen that the respondent No. 2 has not only allowed the petitioners by his show cause notices to produce all the relevant material but in fact has deputed his divisional staff to verify all the relevant documents including the allotment orders issued to the petitioner for supply of white printing paper for the educational purposes from time to time. In fact the charts at Annexures R-1 to R-6 of the return filed on behalf of the respondents refer to the relevant allotments letters which were verified by the inspecting party and in Annexure R-1 at Serial Nos. 9 to 11 it is stated that the allocation letters referred to therein were not shown to the inspecting party.

23. Before we deal with the contention raised on behalf of the respondents whether the declaration made in the gate-passes is a statutory and a conclusive declaration, we may first deal with the factual aspect in controversy in the instant writ petition. It is urged on behalf of the petitioners that had the proper co-relation been made by the respondent No. 2 about the various documents shown to the inspecting party, a conclusion was irresistible that the white printing paper was sold by the petitioner No. 1 for the educational purposes as mentioned in Clause (ii) of column 4 Item No. 1 of the notification dated 16-3-1976. Before we refer to the argument about co-relation, we may make it clear that it is not necessary to decide in the instant writ petition what the effect of the Paper Control Order is, in the sense whether it is obligatory upon the manufacturer to sell the white printing paper only to such persons as directed by the Central Government under Clause 4 of the said order or whether it is permissible for him to sell the said paper to any other person also, the reason being that, according to the petitioners, they have sold the white printing paper only as per allotment orders issued under the authority of the Central Government for the educational purposes covered by Clause (ii) in column 4 of Item 1 of the exemption notification dated 16-3-1976. The controversy in the instant writ petition is thus narrowed down. It is, therefore, necessary to find out whether the petitioners have sold the white printing paper as per the allotment orders under the authority of the Central Government for the educational purposes which are mentioned in Clause (ii) of column No. 4 of Item No. 1 of the notification dated 16-3-1976.

24. In order to demonstrate how the white printing paper is sold as per the allotment orders of the competent authority for educational purposes, the petitioners have filed on record a specimen copy of the gate-pass in the prescribed form as Exhibit ''I'' which shows the date of removal as 7-2-1982. The name shown in the column relating to the name and address of the consignee is "self". The gate pass is in respect of white printing paper whose description and the quantity removed on the above date are shown therein. The petitioners have then filed the invoice as Exhibit ''H'' where the name of the dealer shown is M/s. S. Chand & Co. Ltd., Ramnagar, New Delhi. The date of the said invoice is 7-2-1982. The particulars of the said invoice show that it is as per delivery order dated 1-5-1981. That the goods were despatched to the above company. The description of the paper sent is white printing paper. The total quantity of the paper shown in the invoice as well as the gate-pass is 245.0 kg. It is thus sought to be established that on the same date on which the above quantity of white printing paper was removed "to self", i.e. 7-2-1982, it was despatched to the dealer under the invoice dated the same which mentions the same quantity and the other specifications.

25. The learned counsel for the petitioners has then drawn our attention to Exhibit ''G'' which is a delivery memo dated 1-5-1981. The said delivery memo is in regard to the same dealer, viz. M/s. S. Chand & Co. Ltd., New Delhi. It is clear from its particulars that it relates to the white printing paper. The delivery order No. is BC 0021 which tallies with the delivery order number upon the above invoice dated 7-2-1982. The date of the delivery order, i.e. 1-5-1981 also tallies with the date of the delivery order referred to in the above invoice. It is then shown from the delivery memo that the said delivery order is issued as per the letter dated 18-4-1981 of the Assistant Director of Education, Text Book Branch, Aliganj, New Delhi, which, according to the petitioners, is an allotment letter. The particulars in the delivery memo show that the supplies are to be made against April/June 1981 quarter''s allocation. He has then brought to our notice the allotment letter dated 18-4-1981 Exhibit ''F'' which is addressed to the petitioners No. 1. It is stated in the said letter that the office of the Paper Controller by its letter dated 23-3-1981 had allocated the concessional rate paper for the quarter April-June 1981 for the printing of text books/exercise books and the list of allottees was enclosed with the said letter in which the allotted quota against the name of each of them was shown. The aforesaid allotment order had directed the petitioner No. 1 to issue the white printing paper, as per the list enclosed, to the allottees at an early date. The learned counsel for the petitioners brought to our notice the list of allottees in which at Serial No. 18 the name of M/s. S. Chand & Co., New Delhi, appears to whom as per the said allotment letter, the quantity of white printing paper to be supplied was 206.500 M.T.

26. It is by this process of co-relating the gate pass to the invoice, the invoice to the delivery memo, and the delivery memo to the allotment order that the petitioners have sought to establish that the white printing paper which was removed "to self"

under the gate-pass was in fact immediately on the same day delivered to the dealer to whom it was directed to be delivered as per the allotment letter for the printing of text books/exercise books which is an educational purpose as mentioned in Clause (ii) of Column No. 4 in Item No. 1 of the notification dated 16-3-1976. The learned counsel for the petitioners has stated before use that each of the gate-passes in question under the show cause notices referred to in Exhibit ''M'' can thus be co-related to the allotment orders issued by the competent authorities under the Paper Control Order for the educational purposes mentioned in Clause (ii) of column No. 4 of Item 1 of the aforesaid notification dated 17-3-1976.

27. The learned counsel for the respondents has, however, urged before us that the petitioner has in fact failed to establish such co-relation in this case before the respondent No. 2. The charts are filed as Annexures R-1 to R-6 along with the return filed on behalf of the respondents to show the material which was shown to the inspecting party and which was verified by them. The charts also give the quantities which the petitioner No. 1 was required to supply under the various allotment orders and the supply which it actually made under the gate-passes in question whose numbers and dates are also given in the charts. It is also shown in the charts that the removal under the said gate passes was to self.

28. The learned counsel for the respondents has urged that the allotment orders have not mentioned the purpose for which the allotment was made. The said statement is seriously disputed on behalf of the petitioners and the learned counsel for the petitioners has stated before us that in each of the allotment orders referred to in Annexures R-1 to R-6 the purpose is mentioned and that the said purpose is an educational purpose covered by Clause (ii) in Column No. 4 of the Item No. 1 of the notification of exemption dated 16-3-1976. He has further stated before us that he has in his possession all the allotment orders and he can satisfy us about the purpose for which the allotment was made. In fact, he has brought to our notice some of the allotment orders referred to in Annexure R-1 and has satisfied us that the purpose for which the allotment order was made was shown therein and that the said purpose was educational purpose, as required by the aforesaid Clause (ii) in the notification dated 16-3-1976.

29. In view of the above submissions made on behalf of the petitioners, we had asked the learned counsel for the respondents to bring to our notice any of the allotment orders referred to in Annexures R-1 to R-6 to support his case that in the said allotment orders the educational purpose was not mentioned. The learned counsel for the respondents has not been able to substantiate his case in this regard on a specious plea that the said allotment orders are not in his possession. It may, however, be seen that the allotment orders were verified by the inspecting party and even their numbers are noted and given in the charts filed by the respondents. It is, therefore, not possible for us to believe that the inspecting party would not go through the contents of the documents and would not know that the allotments

orders were for educational purpose which was mentioned therein. It is clear from the allotment orders which are filed with the petition and the allotment orders which are shown to us that the educational purpose of the allotment is mentioned therein. In fact a list of dealers to whom the white printing paper is to be sold accompanies such allotment orders which also shows that they are in respect of the educational purpose. It is, however, not possible for us to verify each and every allotment order and to co-relate the same with the gate-passes in question. Although the invoice and the delivery orders were checked by the inspecting party there is no reference to the said documents either in the charts at Annexures R-1 to R-6 or in the orders of the Assistant Collector.

30. It is, however, sought to be shown on behalf of the respondents that there is no co-relation between the quantity actually supplied under the gate-passes and the quantity which the petitioner No. 1 was authorised to supply by referring to Item No. 3 in the chart annexed as Annexure R-2 to the return. It is urged that under the allotment letter in question which is mentioned in Column No. 2 of the above chart in respect of Item No. 3 the petitioner No. 1 was authorised to supply 20 M.T. whereas the quantity actually supplied under the gate-pass is more than 52 M.T. The learned counsel for the petitioner has, however, explained to us that the said entries itself are not properly shown because although there are two separate allotment orders issued on 29-12-1981 and 30-12-1981 bearing different letter numbers, the said letters are shown in the said chart in the manner as if there was one common allotment letter. The learned counsel for the petitioners has shown to us these separate allotment letters in which in one of the letters the quantity mentioned is 20 M.T., i.e. the allotment letter dated 30-12-1981 and in another that is the allotment letter dated 29-12-1981, the quantity given is 725 M.T.

31. It is, therefore, clear from the above allotment letters shown to us that the entry made at Serial No. 3 showing only 20 M.T. as authorised quantity under the allotment letters referred to therein is not correct. The learned counsel appearing on behalf of the respondents has not thus been able to substantiate his submission before us that the said chart itself shows that there is no co-relation between the allotment letters and the quantity supplied under the gate-passes.

32. It is then urged that the petitioner No. 1 has not shown to the inspecting party all the allotment letters and in this regard our attention is drawn to Serial Nos. 9, 10 and 11 of the chart at Annexure R-1 to the return against which it is mentioned that the allotment letters referred to in the said entries were not received by the Department. The learned counsel for the petitioners has, however, urged before us that during the time the inspecting party visited the factory there was a strike in the factory and it was not, therefore, possible for the petitioner No. 1 to produce all the relevant documents before the inspecting party for verification for which some time was also sought by the petitioner No. 1 but the respondent No. 2 did not extend the time till the end of September 1983 and sent the inspecting party on 5-9-1983 itself

on which date it was not possible for the petitioner No. 1 to produce all the relevant allotment orders and all other necessary documents to show its co-relation with the paper which was removed. The learned counsel for the petitioners has, however, told us that the petitioner No. 1 has now got all the allotment orders including those which could not be shown to the inspecting party and the petitioner No. 1 can satisfy the Assistant Collector in regard to the same. In fact, he made a statement that he can satisfy us in regard to the aforesaid allotment orders which could not be shown to the inspecting party. It is however, not necessary as well as possible for us to examine and co-relate each of the allotment orders, the delivery orders, invoices and the gate-passes. However, what we find is that even in respect of the documents which are inspected by the inspecting party of the respondent No. 2, the finding rendered by the respondent No. 2 i.e. the Assistant Collector that they do not show the educational purpose is clearly perverse as is demonstrated before us from the allotment orders shown to us and also from the allotment orders which are annexed with this petition as Exhibits ''D'' and ''F''. It is clear from the impugned order that it is perfunctory order passed by the respondent No. 2 which clearly shows non-application of his mind to the relevant material in the instant case which was verified by his inspecting party. Although the delivery orders and the invoices were inspected, there is no reference to the said documents in his impugned orders. The said impugned orders passed in relation to the show cause notices at Serial No. 1 to 6 of Exhibit ''M'' are, therefore, liable to be set aside on this short ground.

33. As regards the finding that the paper was cleared to self under the gate passes in question, it is urged on behalf of the petitioners that the paper cleared under the gate-passes was actually sent to the dealer concerned as per the allotment orders although the gate-passes mentioned "removal to self". This was done as per the long commercial practice followed by the petitioner No. 1, for availing of the bill discounting facility of the bank and to enable it to retire the bills expeditiously. It is submitted that the said practice was communicated to the Assistant Collector, Division Chandrapur, at Nagpur, by letter dated 20-8-1976 and which practice was also referred to in one of the orders of the Assistant Collector dated 17-11-1983 in some other excise matter relating to the petitioner No. 1. The submission thus is that the Excise Department was aware of the above practice followed by the petitioner No. 1 and it should have taken into consideration the above practice followed by it and should have actually verified whether the paper cleared to self was directly sent to the dealer as per the allotment letter issued under the Paper Control Order or not. The said letter dated 20-8-1976 and the order dated 17-11-1983 are also brought to our notice by the learned counsel for the petitioners which show that the petitioner No. 1 was following such a practice. If such a practice was in vogue it was all the more necessary for the respondent No. 2, to determine whether the paper was really cleared to self or whether it was sent to the dealer as per the allotment letter. The impugned order of the Assistant Collector does not show that he has taken note of such a practice and he has considered it. It was,

therefore, necessary in the instant cases that the respondent No. 2 should have actually satisfied himself whether the paper which was cleared to self was actually despatched to the dealers as per the allotment orders for the educational purpose. The impugned orders of the Assistant Collector are thus infirm and are liable to be set aside and it is necessary for him to consider these cases afresh after applying his mind to all the material on record. It would be also open to the petitioners to place before him all the documents, including the invoices, delivery orders etc. upon which they rely, including the allotment letters which were not available when the inspecting party visited the factory.

34. As regards the show cause notices at Serial Nos. 7 to 16 in respect of which no orders actually are passed by the respondent No. 2 because of the interim stay granted by this Court, although the submission on behalf of the petitioners is that the said show cause notices are illegal and without jurisdiction, we cannot accept the said contention. Since the gate-passes in question showed that the paper was cleared to self and since no relevant document was filed along with the return which the petitioner No. 1 was required to file under Rule 173G of the Rules, the respondent No. 2 was entitled to give the petitioner No. 1 a show cause notice why the full amount of the excise duty should not be recovered from it because the petitioner No. 1 was not entitled to the concessional rate given in the notification dated 16-3-1976. It is, however, made clear in all the show cause notices that the petitioner No. 1 can and should produce at the time of enquiry all the evidence upon which it intends to rely in support of its contention that it is entitled to concessional rate as per the notification dated 16-3-1976. Since all the show cause notice including the show cause notices at Serial Nos. 7 to 16 are not incompetent and without jurisdiction, they cannot be quashed. However, in relation to all the show cause notice including the show cause notices at Serial Nos. 7 to 16, the respondent No. 2 will have to make an inquiry after giving an opportunity to the petitioners to produce all the relevant material as observed by us in this judgment.

35. Turning now to the principle submission urged on behalf of the respondents that the declaration made by the petitioner No. 1 in the gate-pass is statutory and conclusive of the facts stated in the said gate-pass, the learned counsel for the respondents has brought to our notice some of the provisions of the Act and the Rules from which he wants us to draw an inference that the declaration given as per the prescribed form in the gate-pass in conclusive and binding upon the petitioner No. 1. Even though it may not be conclusive he has taken resort to the principle of estoppel by admission and also to the principle of approbate and reprobate in substantiating his submission that the petitioner No. 1 cannot wriggle out or explain away the admission made by it in the gate-pass that the paper is cleared to self and not to the dealers as per the allotment letters for the educational purposes.

36. The learned counsel for the respondents has in support of his submissions relied upon Section 9(1)(bb), Section 34A and Section 36A of the Act, and Rules 8, 52A,

173G, 173Q, 197 and 198(2) of the Rules framed under the Act. He has also relied upon the following decisions :

(1) Ramkrishna v. Vithal Laxman - 1980 Mh. L.J. 477

(2) Union of India Vs. Haim Aghajan Jer Manor,

(3) South India Coir Mills, Poockakkal Vs. The Additional Collector of Customs and Central Excise and Another,

(4) Sharif-ud-din Vs. Abdul Gani Lone,

(5) Municipal Corporation of Delhi Vs. Tek Chand Bhatia,

(6) Kedarnath Jute Mfg. Co. v. Commrl. Tax Office (1965) 16 STC 607

(7) Charanjit Lal Des Raj v. Sales Tax Tribunal (P&H) (1977) 40 STC 361.

He has further relied upon certain quotations from Halsbury''s Laws of England, Vol. 20, of which he has given us a note. The whole attempt on behalf of the respondents in referring us to the above decisions is to show that even though a declaration may be untrue, the person making such declaration is bound by it.

37. Section 9 of the Act is in respect of offences and penalties and Clause (bb) of sub-section (1) of Section 9 provides for an offence if any excisable goods are removed in contravention of any of the provisions of this Act or any rules made thereunder. We fails to see how the said provision is relevant in the instant case for showing that the declaration made by the petitioner No. 1 in the gate-pass is conclusive. It is also not shown to us which provision of the Act or the Rules is breached by the petitioner No. 1. Section 34A of the Act shows that confiscation or penalty is in addition to any other punishment which can be imposed under the Act. The said section is also not relevant to substantiate the submission made on behalf of the respondents.

38. Section 36A which or relied upon on behalf of the respondents deals with the presumption as to documents in certain cases. Perusal of 36A would show that where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall.

"(a) Unless the country is proved by such person, presume -

(i) the truth of the contents of such document;.....".

It is clear that the said section deals with a presumption in respect of a document tendered in evidence in prosecution. The said section is, therefor, not applicable in cases of other enquiries. Even in the case of prosecution the presumption raised is not an irrebuttable presumption but is a rebuttable presumption as is clear from the

phraseology used therein "unless the country is proved by such person". It is not, therefore, open to the respondents to urge on the basis of Section 36A that the presumption about the documents raised thereunder is conclusive much less in the case of enquiry pursuant to the show cause notices issued in the instant case.

39. Turning now to the Rules which are brought to our notice by the learned counsel for the petitioners, Rule 8 has bearing only on the question of grant of exemption. It is presumable pressed into service to show that the exemption granted under the notification dated 16-3-1976 has nothing to do with the Paper Control Order issued by the Central Govt. It has, however, no bearing on the question whether the declaration made in the gate-pass is conclusive. Rule 52A deals with the removal of the goods under a gate-pass when the officer of the Excise Department is present in the factory. The Explanation to sub-rule (1) of Rule 52A emphasises that the gate-pass should be in the proper form and the proper form is defined in the Rules to mean the proper form as prescribed in Appendix to the Rules. Sub-rule (5) of Rule 52A imposes a penalty upon any person who carries or removes the excisable goods from the factory without a valid gate-pass. The said rule in terms has no bearing on the question raised on behalf of the respondents because it is not their case that the goods are removed without a valid gate-pass.

40. Turning now to Rule 173G(2) it enables the manufacturer to remove the goods under the gate-passes without the counter-signature of the appropriate officer at the time of removal of the goods because the manufacturers who adopt the self-removal procedure get the gate-passes countersigned by the proper officer before hand. It is the manufacturer who fills in the requisite information in the gate-passes about the removal of the goods and has, therefore, to file a return under sub-rule (2A) which is to be accompanied by the gate-passes or the like documents and other relevant documents referred to in sub-rule (3) of Rule 173G. It is really Rule 173Q which has some bearing on the above issue raised on behalf of the respondents in this writ petition. The said rule deals with confiscation and penalty. Clause (a) of the said Rule provides for confiscation and penalty if any excisable goods are removed in conversation of any of the provisions of these Rules. To be precise, it is Clause (bbb) which is relied upon on behalf of the respondents to show that for any wrong or incorrect particulars given in the gate-pass the confiscation and penalty as contemplated by this rule is invited by the manufacturer. It is, however, pointed out on behalf of the petitioners that the said Clause (bbb) is not applicable in the instant case because the said clause was inserted by amendment which was introduced on 22-2-1986.

41. The above submission on behalf of the petitioners is well founded. Clause (bbb) is not applicable in the instant case. Clause (d) of Rule 173Q is also referred to on behalf of the respondents. The said clause deals with confiscation and penalty if any manufacturer, producer or license of a warehouse contravenes any of the provisions of these rules with intent to evade payment of duty. Since Clause (bbb) is not

applicable, the only relevant clause is thus Clause (b) which is attracted for the purpose of confiscation and penalty of the goods only if it is proved that there is contravention of the rules with an intention to evade payment of duty. Rule 197 which was next brought to our notice but perusal of the said rule shows that it deals with only the procedure of giving access or entry to the authorised officer for search, seizure and investigation. Rule 198(2), which is also referred to on behalf of the respondents provides for penalty if there is refusal or failure to give necessary information to the authorised officer or if wilfully the information given is false or misleading. Again the question under Rule 198(2) is whether false information is given wilfully.

42. It may be seen that the form of the gate-pass which is prescribed provides for a certificate to be signed by or on behalf of the manufacturer that the particulars given therein are correct. It is this declaration which has to be made under the prescribed form of the gate-pass which is heavily relied upon on behalf of the respondents to press the submission that any untrue or incorrect declaration given therein is also binding upon the assessee. It is for this purpose that the learned counsel for the respondents has relied upon the several cases already referred to above. However, all the cases relied upon on behalf of the respondent No. 1 are not relevant on this question and we need to considered, therefore, the decisions which are relevant to the above question, Careful scrutiny of these cases would show that in these cases either the provisions of the Act or the Rules required a declaration to be given which is interpreted in the said cases.

43. We may first refer to the decision of the Supreme Court in the case of M/s. South India Coir Mills, Poockakka v. Additional Collector of Customs and Central Excise and another. The question considered therein was about the construction of Section 12(1) of the Foreign Exchanged Regulation Act, 1947 (for short ''FERA'') after it was amended by the Act No. 40 of 1969. It was held in the case that under the amended Section 12(1), the exported was required to furnish a declaration in the prescribed form which must be true in all material particulars, including the amount of full export value of the goods or the expected export value of the goods. Apart from the furnishing of the declaration containing the true statement in all material particulars, the exporter under the amended Section 12(1) of the FERA was also required to affirm in the said declaration that the export value of the goods within the period prescribed would be paid in the prescribed manner.

43A. It may be seen that Section 23 of the FERA does not prescribe any penalty for contravention of Section 12(1) of the said Act although it does prescribe a penalty for contravention of its Section 12(2). However, Section 23A of the said Act provides inter alia that the restrictions imposed by or under sub-section (1) of Section 12 shall be deemed to have been imposed u/s 11 of the Customs Act which empowers the Central Government to prohibit either absolutely or subject to such conditions as may be specified in a notification the import or export of goods of any specified

description. Section 113 of the Customs Act, which also needs to be looked into provides that any goods attempted to be exported or brought within the limits of any customs are a for the purposes of being exported, contrary to any prohibition imposed by or under the said Act or any other law for the time being in force shall be liable to confiscation.

44. It is in the context of the above provisions that it was held in the above case by the Supreme Court that since a wrong declaration was given the shipping bill and the invoice, there was contravention of Section 12(1) of the FERA. It was also held in the said case that since the declaration furnished did not contain an affirmation and since the mode of payment mentioned in the declaration was contrary of Rule 7 of the Rules, there was contravention of Section 12(1) of the Act, which, therefore, attracted the penal consequences in accordance with the provisions of the Act. It is clear from the provisions of Section 12(1) of the FERA considered in the above case that after its amendment by the Act No. 40 of 1969, it required a true declaration in respect of the matters contained therein. There is thus a specific provision in respect of the declaration contravention of which invited penal consequences, as provided in Section 23A of the FERA read with the provisions of Section 11 and Section 113 of the Customs Act.

45. It would, however, be proper to consider also at this stage the decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others, , which is upon the unamended provision of Section 12(1) of the FERA and which is distinguished on that ground in the decision of the Supreme Court cited supra. Prior to amendment also Section 12(1) of the FERA required a declaration to be made before the prescribed authority that the amount representing the full export value of the goods has been or will within the prescribed period be paid in the prescribed manner. It is prescribed manner. It is pertinent to see that Section 23 of the FERA made the contravention of Section 12(2) punishable and not of Section 12(1) of the FERA. However, resort was taken to Section 23A of the FERA for showing that the contravention of Section 12(1) was punishable under the Customs Act as referred to by us above while dealing with the later judgment of the Supreme Court in S.I. Coir Mill''s case, cited supra. The majority judgment delivered by Hegde J. in para 34 held in the case of M/s. Shriram Durga Prasad; cited supra, that before a case can be held to fall within the scope of Section 23A it must be shown that there has been contravention of the restrictions imposed by Section 12(1). It held that the only restriction placed by Section 12(1) read with the Central Government notification dated 4-8-1947 is that no one should export any goods from the country without furnishing the declaration mentioned in Section 12(1). In the said case, the declaration contemplated by Section 12(1) in the prescribed form was furnished and the evidence in support was also submitted and thus prima facie there was no contravention of Section 12(1) of the Act. However, what was urged in the said case was that the invoice price mentioned by the respondents in the declarations did not represent the full export value and hence

the declarations given by them invalid declarations since true export value was not disclosed in the said declaration.

46. The Supreme Court held in the above case that for finding out the restrictions imposed by Section 12(1) what has to be seen is whether the requirement of the said section is satisfied viz. whether the stipulated declaration supported by evidence prescribed or specified is furnished or not and not whether they were true or not. According to the Supreme Court, even if true value was not declared, there was no contravention of the unamended Section 12(1) of the FERA although there may be contravention of Section 12(2) and Rule 5. In para 36 of its judgment, it observed that if it were to hold that every declaration which does not state accurately the full export value of the goods exported is a contravention of the restrictions imposed by Section 12(1), then all exports on consignment basis must be held to contravene the restrictions imposed by Section 12(1). Since in the case of goods sent on consignment basis, the exported can give only an estimated value. The main purpose of Section 12(1) is to get a declaration from the exported that he has either brought or will bring back the amount representing full export value of the goods exported. It, therefore, held that the wording of Section 12(1) does not support such a conclusion.

47. It is thus clear that there must be a specific provision made in the statute or the rules requiring a true declaration to be given before the penal consequences provided for contravention thereof under the statute can be attracted. It is for this reason that it appears that Section 12(1) of the FERA was amended by the Act No. 40 of 1969 providing for a true declaration in respect of matters contained therein because of which it is held in the case of S.I. Coir Mill''s case, cited supra, that there is contravention of the amended Section 12(1) of the FERA. When in the absence of the provision for a true declaration in Section 12(1) of the FERA it is held by the Supreme Court in Shriram Durga Prasad''s case supra, that its contravention does not attract the penal provision although a declaration may be untrue, we fail to see show in the absence of a specific provision either in the Act or the Rules for even a declaration with affirmation, the judgment of the Supreme Court in the case of the S.I. Coir Mill''s case would support the respondents.

48. As regards the decision of the Supreme Court in the case of Kedarnath Jute Mfg. Co. v. Commercial Tax Officer (1965) 16 STC 607, Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, construed therein provided for a statutory declaration by the purchaser if the dealer wanted to get the exemption from the sales tax. That provision was construed to be mandatory for claiming exemption with the result that in the absence of such a declaration, the purchasing dealer was precluded from producing any other evidence to prove that the sale to him was for the purposes mentioned in the said section. The above case is also of no assistance to the respondents since there was a statuary provision in the statute under consideration therein which was interpreted to mean that the declaration therein is mandatory

and is not open to the purchaser to prove by order evidence that the sale to him was for the specific purposes.

49. In the present case, however, no provision of the Act or the Rules is pointed out to show that the assessee has to give a declaration as per the said rule which if incorrect would make him liable to prosecution, confiscation and/or penalty as provided for in the provisions of the Act or the Rules referred to above. Apart from this, it may be seen that the proceedings in question are not the proceedings in relation to the prosecution, confiscation or penalty but are the proceedings relating to recovery of the full value of the excise duty payable by the petitioners in respect of the white printing paper, if they cannot avail of the concessional rate prescribed in the notification dated 16-3-1976. The learned counsel for the petitioners has brought to our notice two decisions of the Madhya Pradesh High Court : (i) Universal Cables Ltd. Vs. Union of India (UOI) and Others, and (ii) Gwalior Rayon Mfg. (Wvg.) Co. Vs. Union of India (UOI) and Others, in which the view taken is that unless the Act or the Rules themselves provide for a declaration, merely because some incorrect information is given in the forms prescribed under Rule 173B and Rule 173C relating to classification list and list prices, it cannot be held that any penalty can be invited because of such incorrect information. The above decision no doubt supports the submission canvassed by him. He has also brought to our notice the provision of Sections 42(1) and 46(4) of the Customs Act providing for a bill of entry and also for a declaration which would means that if any incorrect information is given, the assessees would be liable to penalty.

50. Be that as it may, the very fact that Clause (bbb) was inserted by amendment to Rule 173Q would show that till the said clause was inserted, no penalty was invited for wilfully giving wrong information in the gate-pass. In this regard, it may be seen that it is well settled that the provisions relating to prosecution, confiscation and penalty should be strictly construed and, therefore, in the absence of a specific provision in the Act or the statute, it is difficult to hold that because some incorrect inflammation is given in the gate-passes in question, it will attract the penal provisions in the statute. As regards the applicability of the cannon of struck construction, it is held in the decision of the Supreme Court in M/s. Shriram Durga Prasad''s case that although the rigour and sanctity of the regulations should be maintained for protecting the economic and financial interest of the country, at the same time, it should not be forgotten that Section 12(1) under consideration therein is a penal provision and, therefor, as per the well settled cannon of construction such a provision should be strictly constructed. (See para 37 of the judgment in M/s. Shriram Durga Prasad''s case, cited supra). The contention raised in this regard on behalf of the respondents thus deserves to be rejected.

51. However, on merits also, the question which needs examination in the instant case is whether there is incorrect information given at all by the petitioner No. 1 which would mislead the Department. If the commercial practice adopted by the

petitioner No. 1 is accepted as is being alleged to be followed by it since long, then unless it is pointed out that there is no such commercial practice followed at all by the petitioner No. 1, it cannot be said that by entering in the gate-pass that the white printing paper is removed to self and thereafter selling it to the dealer as per the allotment letter any false information is being given in the gate-pass. It may be seen that in the absence of a specific provision, the petitioners can prove by other evidence that although in view of the commercial practice the consignment is to "self", in fact, it is delivered to the customers as per the allotment letters. The submission made on behalf of the respondents deserves to be rejected on this grounds also.

52. The next question urged on behalf of the respondents to be considered is that by showing in the gate pass that the white printing paper is removed to self, whether the petitioners are estopped by their aforesaid admission in the gate pass by the principle of estoppel and also the principle of approbate and reprobate and whether it is not open to them to explain the said admission. In the first place, it may be seen that it is not open to the respondents to raise the above question of estoppel because the respondent No. 2 himself had given a notice calling upon the petitioners to produce all relevant documents in their possession to show that the paper in question is sold for the purpose for which a concessional rate is provided in the notification dated 16-3-1976. Not only that, the inspecting party of the respondent No. 2 has visited the factory of the petitioners for inspection of the records and has in fact inspected the relevant documents, including the allotment letters as shown by the respondents themselves in the annexures to their return referred to above.

53. It may be seen that rule of estoppel is a rule of evidence and it cannot be exalted to a status of a substantive law [Pl. see Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta, ]. If the respondent No. 2 himself has waived the said principles, if at all, they can be made applicable, it is not open to the respondent No. 2 to urge now that the petitioners are bound by the equitable principles of estoppel and approbate and reprobate. It may again be seen that if the facts in the instant case are seen and read in the light of the commercial practice adopted by the petitioners, the remark in the gate-pass that the paper in questions is removal to self cannot be construed as such an admission which will preclude the petitioners from showing that the paper in question is sold to the dealers to whom it was directed to be sold in the allotment letters. The learned counsel for the petitioners has also brought to our notice the decision of the Supreme Court in the case of Dunlop India Ltd. v. Union of India AIR 1977 SC 597, in which it is held by the Supreme Court that in tax matters the principles of estoppel etc. are not applicable. The said judgment of the Supreme Court no doubt supports the petitioners. For all these reasons we cannot accept the contention raised on behalf of the respondents relating to estoppel etc.

54. In the result, we partly allow the instant writ petition. The impugned orders passed by the respondent No. 2 in respect of show cause notices referred to at Serial Nos. 1 to 6 of Exhibit ''M'' of the petition are quashed and set aside and the respondent No. 2 is directed to pass orders in respect of the said show cause notices afresh after giving an opportunity to the petitioners to produce all relevant material before him, and after considering the said material which may be produced before him by the petitioners. As regards the show cause notices mentioned at serial numbers 7 to 16 of Exhibit ''M'' it is open to the respondent No. 2 to take further steps and decide the said show cause notices after giving an opportunity to the petitioners to produce all relevant material on record and after considering the same in the light of the observations made by us in this judgment. Rule made absolute in the above terms. No costs.

55. The learned counsel for the respondents has orally prayed for leave to appeal to the Supreme Court in the instant case. We do not think that any substantial question of law is involved in the instant case. Moreover, we have only remanded the proceedings to the Assistant Collector, i.e. the respondent No. 2, for a fresh decision according to law in the light of our judgment. Hence prayer for leave to the Supreme Court is rejected.