



GAHC010233982017

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/1762/2017**

M/S. ABHIJIT INTERNATIONAL and ANR.  
HAVING ITS OFFICE AT ABC HOUSE, 1ST FLOOR, T.R. PHOOKAN ROAD,  
GHY.-781001, REP. BY ITS AUTHORIZED SIGNATORY, BIJOY KUMAR MODI.

2: BIJOY KUMAR MODI  
S/O. SUGAN CHAND MODI  
R/O. R.G. BARUAH ROAD  
GUWAHATI  
DIST. KAMRUP M  
ASSAM

VERSUS

THE STATE OF ASSAM and 6 ORS.  
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, EXCISE DEPTT.,  
DISPUR, GHY.-06, ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GHY.-06.

3:THE SUPDT. OF EXCISE

KAMRUP  
OFFICE OF THE DY. COMMISSIONER  
GHY.-01.

4:THE SUPDT. OF POLICE

BIEO  
ASSAM



GHY.

5:THE COMMISSIONER and SECY.  
TO THE GOVT. OF ASSAM  
FINANCE TAXATION DEPTT.  
DISPUR  
GHY.-06.

6:THE COMMISSIONER OF TAX

ASSAM  
KAR BHAWAN  
DISPUR  
GHY.-06.

7:THE SUPDT. OF TAX

UNIT-B  
KAR BHAWAN  
DISPUR  
GHY.-06

Linked Case : WP(C)/3962/2017

M/S. MID ASSAM BONDED WAREHOUSSE and ANR.  
JYOTISH ROAD  
TEZPUR  
REP. BY ITS AUTHORISED SIGNATORY  
BHUPEN BORAH

2: BHUPEN BORAH  
S/O- LATE HEM BORAH  
R/O- BISHU RABHA ROAD  
ASSAM  
VERSUS

THE STATE OF ASSAM and 6 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM  
EXCISE DEPTT.  
DISPUR  
GHY-6  
ASSAM

2:THE COMMISSIONER OF EXCISE  
ASSAM  
HOUSEFED COMPLEX



DISPUR  
GUWAHATI-6  
3:THE SUPERINTENDENT OF EXCISE  
SONITPUR  
TEZPUR  
OFFICE OF THE DEPUTY COMMISSIONER  
SONITPUR  
TEZPUR  
4:THE SUPERINTENDENT OF POLICE  
BIEO ASSAM  
GUWAHATI  
5:THE COMMISSIONER AND SECRETARY  
TO THE GOVT OF ASSAM  
FINANCETAXATIONDEPTT.  
DISPUR  
GUWAHATI-6  
6:THE COMMISSIONER OF TAX  
ASSAM  
KAR BHAWAN  
DISPUR  
GUWAHATI-6  
7:THE SUPERINTENDENT OF TAX  
UNIT-B  
KAR BHAWAN  
DISPUR  
GUWAHATI-6  
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Linked Case : WP(C)/5174/2017

M/S. UNION BONDED WAREHOUSE and ANR.  
HAVING ITS OFFICE AT MEHERPUR  
SILCHAR  
CACHAR  
REP. BY ITS PARTNER SHRI SWAPAN DEB

2: SHRI SWAPAN DEB  
S/O SATISH CHANDRA DEB  
R/O S.S ROAD  
HAILAKANDI  
VERSUS

THE STATE OF ASSAM and 3 ORS.  
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM  
EXCISE DEPTT.  
DISPUR  
GUWAHATI-6



ASSAM

2:THE COMMISSIONER OF EXCISE

ASSAM

HOUSEFED COMPLEX

DISPUR

GUWAHATI-6

3:THE SUPERINTENDENT OF EXCISE

CACHAR

SILCHAR

ASSAM

4:THE SUPERINTENDENT OF POLICE

BIEO

ASSAM

GUWAHATI

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Linked Case : WP(C)/5036/2017

M/S SUBHALAKHI BONDED WAREHOUSE PVT. LTD and ANR

HAVING ITS OFFICE AT AXIS MOTORS

MAKUM ROAD

TINSUKIA

ASSAM

PIN-786125

REP. BY ITS DIRECTOR SRI VIKASH AGARWAL.

2: SRI VIKASH AGARWAL

S/O. SRI BAJRANG LAL AGARWAL

R/O. TOKRIGOLA

MAKUM ROAD

TINSUKIA

ASSAM

PIN-786125.

VERSUS

THE STATE OF ASSAM AND 3 ORS

REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM

EXCISE DEPTT.

DISPUR

GUWAHATI-06

ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM



HOUSEFED COMPLEX  
DISPUR  
GHY.-06.  
3:THE SUPDT. OF EXCISE

TINSUKIA  
ASSAM.  
4:THE SUPDT. OF POLICE

BIEO  
ASSAM  
GUWAHATI.  
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Linked Case : WP(C)/4921/2017

RAFIQUL ISLAM  
LICENSEE OF M/S NEW ASSAM BONDED WAREHOUSE S/O LT. HABIBAR  
RAHMAN R/O KHAIRABRI  
BARPETA ROAD  
DIST. BAREPTA  
ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS.  
REP. BY THE COMMISISONER AND SECRETARY TO THE GOVT. OF ASSAM  
EXCISE DEPARTMENT  
DISPUR  
GUWAHATI-6  
ASSAM

2:THE COMMISISONR OF EXCISE

ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI -6.  
3:THE SUPERINTENDENT OF POLICE

BIEO  
ASSAM  
GUWAHATI.  
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Linked Case : WP(C)/4923/2017

M/S. BORGOHAIN ENTERPRISE PVT. LTD. and ANR.  
HAVING ITS OFFICE AT KATANIGAON  
MARIANI ROAD  
NEAR CINAMARA RAILWAY STATION  
JORHAT  
PIN - 785008  
REP. BY ITS DIRECTOR MS. PUNYA BORGOHAIN.

2: MS. PUNYA BORGOHAIN  
W/O LT. RANJIT BORGOHAIN R/O HOUSE NO. 2  
NAMGHAR PATH  
OPP. DISPUR  
TELEPHONE EXCHANGE  
DISPUR  
GUWAHATI - 781006.  
VERSUS

THE STATE OF ASSAM and 2 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
EXCISE DEPARTMENT  
DISPUR  
GUWAHATI -6  
ASSAM

2:THE COMMISISONER OF EXCISE

ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI -6.  
3:THE SUPERINTENDENT OF POLICE

BIEO ASSAM  
GUWAHATI.  
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Linked Case : WP(C)/5514/2017

M/S. BARAK WAREHOUSE PVT. LTD. and ANR.  
HAVING ITS OFFICE AT LACHMIDHAR ROAD  
TARAPUR  
SILCHAR-788003  
REPRESENTED BY ITS DIRECTOR SHRI ARINDAM HORE



2: ARINDAM HORE

S/O SHRI BABUL HORE  
R/O LACHMIDHAR ROAD  
TARAPUR  
SILCHAR 788003  
VERSUS

THE STATE OF ASSAM and 2 ORS.  
REPRESENTED BY THE COMMISSIONER and SECY. TO THE GOVT. OF  
ASSAM  
EXCISE DEPTT.  
DISPUR  
GUWAHATI-6  
ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI-6  
3:THE SUPERINTENDENT OF POLICE BIEO  
ASSAM  
GUWAHATI.  
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Linked Case : WP(C)/2290/2018

SARTHE RONGPI  
S/O SRI SARAT RONGPI  
R/O KARAGAON  
KHATKHATI  
DIST. KARBI ANGLONG  
ASSAM  
PIN - 782480.

VERSUS

THE STATE OF ASSAM AND 2 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

EXCISE DEPARTMENT

DISPUR  
GUWAHATI -06



ASSAM

2:THE COMMISSIONER OF EXCISE

ASSAM  
HOUSEFED COMPLEX

DISPUR  
GUWAHATI -06.  
3:THE SUPERINTENDENT OF POLICE

BI(EO)  
ASSAM  
GUWAHATI.  
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Linked Case : WP(C)/2780/2017

KAMALESH SINGH  
LICENSEE OF M/S SUN INTERNATIONAL BONDED WAREHOUSE S/O LT.  
GANGASAGAR SINGH R/O MISSION CHARIALI  
TEZPUR DIST. SONITPUR  
PIN - 784001.

VERSUS

THE STATE OF ASSAM and 3 ORS.  
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM  
EXCISE DEPARTMENT  
DISPUR  
GUWAHATI-6  
ASSAM

2:THE COMMISSIONER OF EXCISE

ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI-6  
3:THE SUPERINTENDENT OF EXCISE

SONITPUR  
TEZPUR  
ASSAM  
PIN - 784001.  
4:THE SUPERINTENDENT OF POLICE





BIEO  
ASSAM  
GUWAHATI.  
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Linked Case : WP(C)/4924/2017

M/S. MARUTI NANDAN BONDED WAREHOUSE and ANR.  
HAVING ITS OFFICE AT HENGRABARI  
EXPRESS HIGHWAY  
GHY-6  
REP. BY ITS PARTNER NARAYAN AGARWAL

2: NARAYAN AGARWAL  
S/O- BHAWARLAL AGARWAL  
R/O- KUKUDINI ROAD  
FA ROAD  
KUMAR PARA PANCH ALI  
GHY- 781001  
VERSUS

THE STATE OF ASSAM and 2 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM  
EXCISE DEPARTMENT  
DISPUR  
GHY- 6  
ASSAM

2: THE COMMISSIONER OF EXCISE  
ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GHY- 6  
3: THE SUPERINTENDENT OF POLICE BIEO  
ASSAM  
GHY  
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Linked Case : WP(C)/2591/2017

RAMKRISHNA ROY  
LICENSEE OF M/S. SURMA BONDED WAREHOUSE  
S/O. LT. UPENDRA CHANDRA ROY  
R/O. MADAM MOHAN ROAD  
WARD NO.21  
P.O. and P.S. KARIMGANJ  
DIST. KARIMGANJ



ASSAM  
PIN-788710.

VERSUS

THE STATE OF ASSAM and 3 ORS.  
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM  
EXCISE DEPTT.  
DISPUR  
GHY.-06  
ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GHY.-06.  
3:THE SUPERINTENDENT OF EXCISE

KARIMGANJ  
DIST. KARIMGANJ  
ASSAM  
PIN-788710.  
4:THE SUPERINTENDENT OF POLICE

BIEO  
ASSAM  
GUWAHATI.

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Linked Case : WP(C)/1838/2017

KDC BONDED WAREHOUSE PVT. LTD. and ANR.  
HAVING ITS OFFICE AT PARMESHARI BUILDING  
5TH FLOOR  
ROOM NO. 10 CHATTRIBARI  
GHY.-781001 REP. BY THE DIRECTOR  
ROSHAN CHAND

2: ROSHAN CHAND  
S/O. SRI DHANI CHAND  
R/O. MAHENDRA SINGH BUILDING  
K. C. ROAD  
CHATTRIBARI  
GHY.-781008.



VERSUS

THE STATE OF ASSAM and 6 ORS.  
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM  
EXCISE DEPTT.  
DISPUR  
GHY.-06  
ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GHY.-06.  
3:THE SUPDT. OF EXCISE

MAKRUP  
OFFICE OF THE DY. COMMISSIONER  
GHY.-01.  
4:THE SUPDT. OF POLICE

BI EO  
ASSAM  
GUWAHATI.  
5:THE COMMISSIONER and SECY.  
TO THE GOVT. OF ASSAM  
FINANCE TAXATION DEPTT.  
DISPUR  
GHY.-06.  
6:THE COMMISSIONER OF TAX

ASSAM  
KAR BHAWAN  
DISPUR  
GHY.-06.  
7:THE SUPDT. OF TAX

UNIT-'B'  
KAR BHAWAN  
DISPUR  
GHY.-06.  
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Linked Case : WP(C)/3070/2017

M/S. J.C. BUSINESS PVT. LTD and ANR.  
HAVING ITS OFFICE AT CHIRKUNDI



RAM NAGAR  
SILCHAR-3  
REP. BY ITS AUTHORISED SIGNATORY GOPALAN CHOUDHURY

2: GOPALAN CHOUDHURY  
S/O- LATE GYANENDRA CHOUDHURY  
R/O- GIRISH ROAD  
SILCHAR  
ASSAM  
VERSUS

THE STATE OF ASSAM and 3 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM  
EXCISE DEPTT. DISPUR  
GUWAHATI-6  
ASSAM

2:THE COMMISSIONER OF EXCISE  
ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI-6

3:THE SUPERINTENDENT OF EXCISE  
CACHAR  
OFFICE OF THE DEPUTY COMMISSIONER  
SILCHAR-1

4:THE SUPERINTENDENT OF POLICE BIEO  
ASSAM  
GUWAHATI  
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Linked Case : WP(C)/1771/2017

M/S. THE EASTERN ENTERPRISE and ANR.  
HAVING ITS OFFICE AT M.L. NEHRU ROAD  
GUWAHATI-781001 REPRESENTED BY ITS AUTHORIZED SIGNATORY  
PULAK ROY.

2: PULAK ROY

S/O. LT. MANORANJAN ROY  
R/O. HOUSE NO. 43  
MILAN NAGAR  
LAL GANESH  
GUWAHATI  
DIST. KAMRUPM  
ASSAM.



VERSUS

THE STATE OF ASSAM and 6 ORS.  
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM  
EXCISE DEPTT.  
DISPUR  
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ASSAM.

2:THE COMMISSIONER OF EXCISE  
ASSAM

HOUSEFED COMPLEX  
DISPUR  
GHY-06.  
3:THE SUPDT. OF EXCISE  
KAMRUP

O/O. THE DEPUTY COMMISSIONER  
GHY.-01.  
4:THE SUPDT. OF POLICE  
BIEO  
ASSAM

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5:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

FINANCE TAXATION DEPTT.  
DISPUR  
GHY.-06.  
6:THE COMMISSIONER OF TAX  
ASSAM

KAR BHAWAN  
DISPUR  
GHY.-06.  
7:THE SUPDT. OF TAX  
UNIT-'B'

KAR BHAWAN  
DISPUR  
GHY.-06.  
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Linked Case : WP(C)/4922/2017

KANU MOZINDER BARUAH



PROPRIETOR OF DPM BARUAH BONDED WAREHOUSE  
S/O LATE DEVI PRASAD MOZINDER BARUAH  
R/O BARUA COMPLEX  
A.T. ROAD  
NEAR STATE BANK OF INDIA  
SIVSAGAR  
ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS.  
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM  
EXCISE DEPTT.  
DISPUR  
GUWAHATI-6  
ASSAM

2:THE COMMISSIONER OF EXCISE  
ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE  
BIEO  
ASSAM  
GUWAHATI  
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Linked Case : WP(C)/4915/2017

M/S. FLAMINGO BREWERIES PVT. LTD. and 2 ORS.  
HAVING ITS OFFICE AT BOKAJAN  
KARBI-ANGLONG  
ASSAM  
REP  
BY ITS DIRECTOR SHRI SANJU PHANGCHO

2: SHRI BIJOY PHANGCHO  
S/O SHRI HOREN PHANGCHO  
R/O NEAR BAPTISH CHURCH  
WARD NO. 7  
P.O. AND P.S. DIPHU  
DIST. KARBI ANGLONG  
ASSAM  
PIN 782460



3: SRI SANJU PHANGCHO  
S/O SHRI LONGKI PHANGCHO  
R/O TARALANGSO TINIALI  
DIPHU  
KARBI ANGLONG  
ASSAM  
VERSUS

THE STATE OF ASSAM and 2 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM  
EXCISE DEPARTMENT  
DISPUR  
GUWAHATI- 6  
ASSAM

2: THE COMMISSIONER OF EXCISE  
ASSAM  
HOUSEFED COMPLEX  
DISPUR  
GHY- 6  
3: THE SUPERINTENDENT OF POLICE BIEO  
ASSAM  
GHY  
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Linked Case : WP(C)/5048/2017

M/S. S.B.BONDED WAREHOUSE PVT. LTD. and ANR.  
HAVING ITS OFFICE AT RAJ SINGH PALACE  
S.S. ROAD  
FANCY BAZAR  
GUWAHATI-781001  
REPRESENTED BY ITS MANAGING DIRECTOR SHRI DEBAJYOTI BHUYAN.

2: DEBAJYOTI BHUYAN

S/O. LT. RAM CHANDRA BHUYAN  
R/O. 6B  
G.D. APARTMENT  
DR. J.C. DAS ROAD  
PANBAZAR  
GUWAHATI-781001.  
VERSUS

THE STATE OF ASSAM and 3 ORS.  
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM  
EXCISE DEPTT.



DISPUR  
GUWAHATI-6  
ASSAM.

2:THE COMMISSIONER OF EXCISE  
ASSAM

HOUSEFED COMPLEX  
DISPUR  
GUWAHATI-6.  
3:THE SUPERINTENDENT OF EXCISE  
CACHAR

SILCHAR  
ASSAM.  
4:THE SUPERINTENDENT OF POLICE  
BI EO

ASSAM  
GUWAHATI.  
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Linked Case : WP(C)/1873/2017

RADIANT MANUFACTURES PVT. LTD. and ANR.  
HAVING ITS OFFICE AT PARMESHWARI BUILDING  
5TH FLOOR  
ROOM NO. 10  
CHATRIBARI  
GUWAHATI-781001  
REP. BY ITS DIRECTOR  
VICKI CHAND.

2: VICKI CHAND

S/O. SHRI DHANI CHAND  
R/O. MAHENDRA SINGH BUILDING  
K.C. ROAD  
CHATRIBARI  
GUWAHATI-781008.  
VERSUS

THE STATE OF ASSAM and 6 ORS.  
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM  
EXCISE DEPTT.  
DISPUR  
GHY.-06





ASSAM.

2:THE COMMISSIONER OF EXCISE  
ASSAM

HOUSEFED COMPLEX  
DISPUR  
GUWAHATI-06.  
3:THE SUPERINTENDENT OF EXCISE

KARBI ANGLONG  
KARBI ANGLONG  
ASSAM.  
4:THE SUPERINTENDENT OF POLICE  
BIEO  
ASSAM

GUWAHATI.  
5:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

FINANCE TAXATION DEPTT.  
DISPUR  
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6:THE COMMISSIONER OF TAX  
ASSAM

KAR BHAWAN  
DISPUR  
GUWAHATI-06.  
7:THE SUPERINTENDENT OF TAX

UNIT-'B'  
KAR BHAWAN  
DISPUR  
GHY.-06.  
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Linked Case : WP(C)/2567/2017

SANJAY SARKAR  
LICENSEE OF M/S UNIVERSLAL ENTERPRISES BONDED WAREHOUSE  
SON OF SHRI CHANDRA SARKAR  
R/O L.B. ROAD  
TEZPUR  
DIST. SONITPUR  
PIN-784001



VERSUS

THE STATE OF ASSAM and 3 ORS.  
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM  
EXCISE DEPARTMENT  
DISPUR  
GUWAHATI-6  
ASSAM

2:THE COMMISSIONER OF EXCISE  
ASSAM

HOUSEFED COMPLEX

DISPUR

GUWAHATI-6

3:THE SUPERINTENDENT OF EXCISE  
SONITPUR

TEZPUR

ASSAM

PIN-784001

4:THE SUPERINTENDENT OF POLICE BIEO

ASSAM

GUWAHATI

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### Advocates for the petitioners

Mr. I. Choudhury, Senior Advocate;

Mr. N. J. Khataniar, Advocate;

Mr. B. Kaushik, Advocate

### Advocate for the respondents

Mr. K. P. Pathak, Standing Counsel, Excise Department

Mr. B. Choudhury, Standing Counsel, Finance Department



**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER (ORAL)**

**Date : 28-02-2023**

Heard Mr. I. Choudhury, the learned Senior counsel assisted by Mr. N. J. Khataniar and Mr. B. Kaushik, the learned counsel appearing on behalf of the petitioners and Mr. K. P. Pathak, the learned Standing counsel appearing on behalf of the Excise Department. I have also heard Mr. B. Choudhury, the learned Standing counsel appearing on behalf of the Finance Department.

2. All the writ petitions have been taken up together as the facts involved therein are similar and the issue is same. For the purpose of appreciating the dispute involved herein, it would be relevant to take note of that the petitioners herein in the batch of writ petitions were earlier running their business as "Bonded Warehouse" within the meaning of Rule 2(ii) of the Assam Bonded Warehouse Rules, 1965. For the purpose of convenience, the said Rule is quoted hereinbelow:

*"2(ii) "Bonded warehouse" means the premises or any part of the premises approved and licensed for deposit or storage of spirits on which duty has not been paid;"*

3. A perusal of the above Rule would show that a "Bonded Warehouse" means the premises or any part of the premises approved and licensed for deposit or storage of spirits on which duty has not been paid. At this stage, this Court also finds it relevant to refer to Rule 30 of the Assam Bonded Warehouse Rules, 1965 (for short the "Rules of 1965") which stipulates that the licensee of

the bonded warehouse shall import the spirits under bond on the import permits issued by the Additional Commissioner of Excise, Assam. The retail and wholesale licence-holders of foreign liquor shall obtain necessary transport pass from the Collector or pre-payment of duty at the prescribed rates for movement of spirits from the bonded warehouse to their respective shop premises. The said Rule therefore makes it clear that it is the retail and wholesale licence holder of the foreign liquor who has to obtain the transport pass from the Collector or pre-payment of duty at the prescribed rate for movement of spirits from the bonded warehouse to their respective shop premises. There is no embargo as per the Rules of 1965 upon the bonded warehouse to pay the duty at the prescribed rates. It is also relevant to take into account Rule 41 which stipulates the payment of duty. In terms with Rule 41, the duty imposed on foreign liquor and spirits (other than country spirits) imported under bond or stored in a bonded warehouse shall be paid before removal from the bonded warehouse unless a bond has been executed. Rule 42 stipulates the manner of payment of duty. In terms of the said Rule, the duty on the spirits is to be paid before removal from a bonded warehouse, by making payment into the local treasury, or a treasury approved by the Collector of the district in which such spirits are to be sold or consumed by direct payment into treasuries by challans. Option has also been given for advance payment on account of duty with the permission of the Collector.

4. For the purpose of the instant dispute, Rule 43 assumes importance for which Rule 43 is reproduced hereinbelow:

*“43. Rejection of destruction of unsuitable spirits.- If spirits stored in a bonded warehouse are found to be inferior quality or otherwise unsuitable for the purpose for which they were stored, they may be*

*rejected or destroyed or otherwise dealt with under the orders of the Excise Commissioner.”*

A perusal of the above quoted Rule shows that if the spirits stored in a bonded warehouse are found to be of inferior quality or otherwise unsuitable for the purpose for which they were stored, they may be rejected or destroyed or otherwise dealt with under the orders of the Excise Commissioner. This aspect of the matter assumes importance inasmuch as without an order of the Excise Commissioner unsuitable spirits cannot be rejected or destroyed or otherwise dealt with.

5. In the backdrop of the above, let this Court further analyze the facts. The State Legislature had enacted an Act in the name and style of “The Assam Excise Act, 2000”. The said Act hereinafter is referred to as the Act of 2000. Section 1(3) of the Act of 2000 stipulates that it shall come into force on such date as the State Government may by notification appoint in that behalf. It is relevant at this stage to take note of that vide a notification No.Ex.138/2015/101 dated 30.08.2016, the Act of 2000 has been brought into force w.e.f. 01.09.2016.

6. The State Government in exercise of powers under Section 84 of the Act of 2000 formulated the Assam Excise Rules, 2016 (for short the “Rules of 2016”). It appears from the Rules of 2016 that Rule 1A relates to various definitions. Rule 1A(xvi) and Rule 1A(xvii) are relevant for the purpose of the instant case for which the same are reproduced hereinbelow:

**“1A (xvi) “Bonded warehouse”** means the premises or any part of the premises within a manufactory and/or within a Canteen Stores Depot (CSD) warehouse approved and licensed for deposit or storage of spirits

*on which duty has not been paid;*

**(xvii) “Wholesale warehouse”** means the premises or any part of the premises approved and licensed for deposit or storage of spirits on which duty/levy has been paid and from where India made foreign liquor may be supplied by wholesale;”

7. From a perusal of the definition of Rule 1A(xvi), it would transpire that the “bonded warehouse” now as per Rules of 2016 means the premises or any part of the premises within a manufactory and/or with a Canteen Stores Depot Warehouse approved and licensed for deposit or storage of spirits on which duty has not been paid. In terms with Rule 1A(xvii) of the Rules of 2016, “wholesale warehouses” are premises or any part of the premises approved and licensed for deposit or storage of spirits on which duty/levy has been paid and from where India made foreign liquor may be supplied by wholesale. Therefore, upon a conjoint reading of Rule 2(ii) of the Rules of 1965 with Rule 1A(xvi) and Rule 1A(xvii) of the Rules of 2016, it would transpire that a bonded warehouse in terms with the Rules of 1965 would continue to be a bonded warehouse only if the premises or any part of the premises is within a manufactory and/or within a Canteen Stores Depot Warehouse. The difference with the “bonded warehouse” in terms with the Rules of 1965 and the Rules of 2016 is that the bonded warehouse now means the premises or any part of the premises within manufactory and/or Canteen Stores Depot Warehouse approved and licensed for deposit or storage of spirits. However, if the bonded warehouse is not within the manufactory and/or Canteen Stores Depot Warehouse, then it would be a “wholesale warehouse” by definition of Rule 1A(xvii) of the Rules of 2016 and deposit or storage of spirits are permissible in respect to which duty/levy has been paid. In other words, the incidence of levy of duty had changed in as



much as when there is deposit or storage of spirits in whole warehouses, the said spirits have to be understood that the duty/levy have already been paid.

8. In the instant cases, as the petitioners herein whose bonded warehouse in terms with Rule 2(ii) of the Rules of 1965 did not have within their premises or any part of the premises within the manufactory and/or Canteen Stores Depot Warehouse came within the definition of "Wholesale Warehouses" within the meaning of Rule 1A(xvii) of the Rules of 2016. In view of the apparent difference and the incidence of levy changed, certain steps were required before coming into effect of the Act of 2000 and the Rules of 2016. This transitional requirement was met with by an order of the Government of Assam, Excise Department issued by the Commissioner and Secretary to the Government of Assam, Excise Department dated 29.08.2016. A perusal of the order dated 29.08.2016 stipulates that with the coming into effect of the Rules of 2016, it would results in certain systematic reforms in the collection of excise duty. However, in order to harmonize the point of collection of VAT with that of the collection of the Excise duty under the Rules of 2016, the Assam Value Added Tax Act, 2003 has also been amended vide Assam VAT (Amendment) Act, 2016. It was also taken note of that on the date of transition to the new system, the erstwhile Bonded Warehouses (now, Wholesale Warehouse licensees) would be in possession of substantial quantity of taxable stock of liquor, which has neither suffered Excise duty nor State VAT, in view of the earlier system of payment of such duty/taxes. It was also found that there was a requirement to regulate the manner in which the Ad-valorem levy and State VAT on such transitional stock of liquor which has not already been subjected to Excise duty and VAT, can be realized from the erstwhile Bonded Warehouses (now Wholesale Warehouse Licensees). Under such circumstances, the Governor of Assam had laid down

certain guidelines in the order dated 29.08.2016. Clause 1 to Clause 10 of those guidelines being relevant is reproduced hereinunder:

- “1. The Joint Team constituted as per Government Order, shall take stock of all such transitional taxable under-bond stock of liquor/spirit in the erstwhile Bonded Warehouses (now Wholesale Warehouse licensees) as on the date preceding the date of the new Assam Excise Rules, 2016 coming into force including the stock date of the new Assam Excise Rules, 2016 coming into force including the stock in transit, the value of such stock as per Books of Accounts and shall calculate and record the Govt. levies involved on such stock, including the Ad-valorem levy and VAT as per the Assam Excise Rules, 2016 and the Assam VAT Act, 2003 as amended.*
- 2. The Head of the Joint Team shall then furnish a report to the Excise Commissioner and Commissioner of Taxes within three working days of the Assam Excise Rules, 2016 coming into force, a warehouse wise list containing brand wise transitional taxable under-bond stock of liquor stock including the stock in transit, the value thereof and the Ad-valorem levy and VAT involved thereon.*
- 3. (a) On receipt of such report from the concerned Head of the Joint Team, the Excise Commissioner shall pass an order to the effect that the entire amount of Ad-valorem levy involved on the transitional taxable under-bond stock of liquor be deposited by the licensees of the erstwhile bonded warehouses (now Wholesale Warehouse licensees) at the rates applicable under the new Assam Excise Rules, 2016, within a period of three (3) months from the date of coming into force of such Rules.*

*(b) On receipt of such report, the Commissioner of Taxes shall also pass an order to the effect that the entire amount of VAT*



*involved on the transitional taxable under-bond stock of liquor be deposited by the licensees of the erstwhile bonded warehouses (now Wholesale Warehouse licensees) at the rates applicable under the Assam VAT Act, 2003, as amended.*

- 4. The Superintendent of Excise of the concerned District shall submit daily report to the Excise Commissioner and Commissioner of Taxes along with copy to the concerned Superintendent of Taxes, showing Warehouse-wise amount of arrear Ad-valorem levy and VAT realized on that day.*
- 5. The entire amount of Ad-valorem levy and VAT on the transitional taxable under-bond stock of liquor as on the day of the Assam Excise Rules, 2016 coming into force including the stock that has arrived subsequently on the strength of permits issued before the Assam Excise Rules, 2016 coming into force, shall be realized within three months from the date of notification of the New Excise Rules. If any erstwhile Bonded Warehouse (now Wholesale Warehouse licensees) fails to deposit the entire amount of arrear Ad-valorem levy & VAT within that period, his Warehouse Licence shall be liable to be cancelled and the stock therein shall be liable to be confiscated to the State.*
- 6. In case of presence of unfit or dead stock found in the erstwhile Bonded Warehouses (now Wholesale Warehouse licensees), the same shall be dealt with as per established procedure, on specific report from the Head of the Joint Team to the Excise Commissioner and Commissioner of Taxes on case to case basis within this three months period.*
- 7. Godown or storage wastage allowance shall be allowed as per established procedure, on specific report from the Head of the Joint Team to the Excise Commissioner and Commissioner of Taxes on warehouse to warehouse basis within this three months of period.*
- 8. All fresh applications for import/transport/export shall be governed*

*by the provisions of the Assam Excise Rules, 2016 and Assam VAT Act, 2003 (as amended).*

*9. The Excise establishment posted at the erstwhile Bonded Warehouses (now Wholesale Warehouse licensees) shall not be withdrawn till the entire amount of arrear Ad-valorem levy and VAT on the transitional taxable under-bond stock of liquor including the stock in transit is deposited and the licensee concerned shall be liable to reimburse to the Government, the salary etc. of such excise establishment till they are withdrawn by the Government on a no-dues certificate issued by the concerned Superintendent of Excise or Deputy Superintendent of Excise and the concerned Superintendent of Taxes.*

*10. The Government reserves to itself the right to modify the instructions mentioned herein above and may issue such additional instructions as it may deem fit and proper."*

9. In terms with Clause-1 of the order dated 29.08.2016, the Joint Team was constituted to take stock of all such transitional taxable under-bond stock of liquor/spirit in the erstwhile Bonded Warehouses (now Wholesale Warehouse licensees) as on the date preceding the date of the Rules of 2016 coming into force including the stock date of the Rules of 2016 coming into force including the stock in transit, the value of such stock as per Books of Accounts and shall calculate and record the Govt. levies involved on such stock, including the Ad-valorem levy and VAT as per the Rules of 2016 and the Assam VAT Act, 2003 as amended. It further appears from the admitted records that the Joint Team so constituted, made inspections and submitted assessment report in respect to 73 numbers of warehouses. Based on such report, the Commissioner of Excise, Assam issued demand notices to the licensees of the erstwhile bonded warehouse directing them to deposit the Ad-valorem levy and the VAT payable.



In terms with the stand of the respondents in their affidavit dated 08.01.2021 filed in WPC No.4915/2017, the total amount of Ad-valorem levy imposed was Rs.222,07,77,283/-. The total amount of VAT involved was Rs.144,01,11,882/-. It further transpires that against the said demands, the licensee concerned have deposited a total amount of Rs.128,43,07,236/- towards Ad-valorem levy and total amount of Rs.54,46,30,050/- towards VAT till the date of the filing of the said affidavit. It may not be out of place to mention that from the said Affidavit and more particularly the charts enclosed therewith indicated that substantial quantity of non-consumable stock of IMFL and Beer were lying in the warehouses at the time of inspection carried out by the Joint Team.

10. The issue involved in the writ petition however is not in reference to the said deposit or short deposit of the amounts so demanded upon the warehouses. The issue which arises herein is in respect to a subsequent events which had taken place. It appears on record that the Bureau of Investigation (EO), Assam, had made inspection to all the warehouses of the petitioners herein involved in the batch of writ petitions. During the investigation carried out, the Bureau of Investigation (EO), Assam found additional quantities of IMFL and Beer in storage and deposit within the warehouses of the petitioner in respect to which there was no payment of Excise Duty. The said inspections were carried out on various dates as submitted by the learned Standing counsel for the Excise Department and thereupon it further appears from the records that the Bureau of Investigation (EO), Assam had submitted those reports to the Commissioner of Excise. It is very pertinent herein to take note of the dates of inspection carried out from the available date as well as when reports were submitted by the

Superintendent of Police, BI(EO). Taking into consideration that Show Cause notices and orders were passed, for the sake of convenience, the details are given in the chart below.

Case No.	Date of Inspection	Date of Report	Date of Show cause Notice	Date of Order
WP(C) No.1762/2017	10.11.2016	06.12.2016	13.12.2016	01.02.2017
WP(C) No.1771/2017	10.11.2016	06.12.2016	13.12.2016	01.02.2017
WP(C) No.1838/2017	10.11.2016	06.12.2016	13.12.2016	01.02.2017
WP(C) No.1873/2017	12.12.2016	01.02.2017	12.01.2017	09.02.2017
WP(C) No.2567/2017	07.02.2017	14.03.2017	18.03.2017	03.04.2017
WP(C) No.2591/2017	03.02.2017	14.03.2017	18.03.2017	23.03.2017
WP(C) No.2780/2017	07.02.2017	14.03.2017	18.03.2017	31.03.2017
WP(C) No.3070/2017	02.02.2017	14.03.2017	18.03.2017	12.04.2017
WP(C) No.3962/2017	07.02.2017	14.03.2017	18.03.2017	15.05.2017
WP(C) No.4915/2017	12.12.2016	25.01.2017	06.02.2017	14.07.2017
WP(C) No.4921/2017	09.12.2016	25.01.2017	06.02.2017	14.07.2017
WP(C) No.4922/2017	18.01.2017	01.02.2017	07.02.2017	14.07.2017
WP(C) No.4923/2017	18.01.2017	01.02.2017	07.02.2017	02.03.2017
WP(C) No.4924/2017	09.12.2016	25.01.2017	12.01.2016 Date precedes the date of inspection	14.07.2017
WP(C) No.5036/2017	07.04.2017	01.07.2017	No Show Cause notice	19.07.2017
WP(C) No.5048/2017	03.02.2017	23.03.2017	29.03.2017	15.05.2017
WP(C) No.5174/2017	03.02.2017	24.02.2017	02.03.2017	14.07.2017

WP(C) No.5514/2017	02.02.2017	24.02.2017	07.03.2017	22.03.2017
WP(C) No.2290/2018	12.12.2016	01.02.2017	12.01.2017	07.03.2017

11. In pursuance to the said reports, the Commissioner of Excise have issued show cause notices upon the petitioners. In the writ petitions i.e. WP(C) No.1762/2017, WP(C) No.1771/2017 and WP(C) No.1838/2017, the show cause notices are paramateria in content except the change in the name of licensee. The contents of the said show cause notice in respect to WP(C) No.1762/2017 is reproduced hereinbelow.

**GOVERNMENT OF ASSAM**

**OFFICE OF THE COMMISSIONER OF EXCISE: ASSAM: GUWAHATI ::**

No.III-372/2016-17/60

Dt. Guwahati, the 13<sup>th</sup> Dec/2016

To

The Licence, M/s Abhijit International Bonded Warehouse, Guwahati

**Sub : Show Cause Notice**

It has come to notice of the undersigned from the Inspection Report submitted by the Superintendent of Police, BI(EO), Guwahati that irregularities in respect of maintenance of Accounts and Stock Register has been found in your Wholesale Warehouse since Sept/2016 to 10<sup>th</sup> Nov/2016 for which difference of physical stock and the stocks entered in the register have been found. This is a gross violation of Rule 336 of the Assam Excise Rules, 2016.

Hence you are hereby asked to show cause as to why action under Section 30(1) of the Assam Excise Act/2000 or penalty under Rule 342(b) of the Assam Excise Rules, 2016 should not be initiated against you for such irregularities.

Your reply should reach to the undersigned through the concerned Superintendent of Excise within seven days of this notice without fail.

Commissioner of Excise, Assam

Housefed Complex, Dispur, Ghy-6

12. In the other writ petitions i.e. in WP(C) No.1873/2017, WP(C) No.2567/2017, WP(C) No.2591/2017, WP(C) No.2780/2017, WP(C) No.3070/2017, WP(C) No.3962/2017, WP(C) No.4915/2017, WP(C) No.4921/2017, WP(C) No.4922/2017, WP(C) No.4923/2017, WP(C) No.4924/2017, WP(C) No.5048/2017, WP(C) No.5174/2017, WP(C) No.5514/2017 and WP(C) No.2290/2017, the Show Cause notices are also paramateria to each other except the change in the name of the licensee in question. The contents of the said Show Cause notice in WP(C) No.1873/2017 is quoted hereinbelow:

**GOVERNMENT OF ASSAM****OFFICE OF THE COMMISSIONER OF EXCISE: ASSAM****HOUSEFED COMPLEX, DISPUR, KAMRUP, GUWAHATI-6**

No.III-372/2016-2017/79

Dated Guwahati, the 12<sup>th</sup> Jan/2017

To : The Licence, M/s Radiant Bonded Warehouse, Khatkhati, Bokajan, Karbi Anglong.

**Sub : Show Cause Notice**

It has come to notice of the undersigned from the Inspection Report submitted by the Superintendent of Police, BI(EO), Guwahati that during the inspection of your Bonded Warehouse on 11<sup>th</sup> December, 2016 the following irregularities and anomalies have been detected in the physical stock and documents:-

7. Stock Register (Brand Wise)

8. Transport Permits files.

You are hereby asked to show cause as to why necessary action under the law shall not be taken



against you for the above violations. Your reply should reach to the undersigned within 7 (seven) days from the date of receipt of this communication without fail.

Commissioner of Excise, Assam

Dispur, Ghy-6

It may be pertinent to mention that in WP(C) No.5036/2017, there appears to be no Show Cause notice.

13. From the contents of the above two Show Cause notices, one aspect of the matter is clear that the said actions were initiated on the basis of an inspection report submitted by the Superintendent of Police BI(EO), Guwahati. However, surprisingly, the said respective inspection reports were not furnished to the Noticees of the said Show Cause notices. It is also relevant to take note of that in the said Show Cause notice, there is even no mention about the contents that the inspection reports submitted by the Superintendent of Police, BI(EO), Guwahati or for that matter that the said report differs from the inspection conducted by the Joint Team in pursuance of the order dated 29.08.2016. There was also no mention about the discrepancies in the inspection reports submitted by the Joint Team constituted in terms with the order dated 29.08.2016 even in the inspection reports submitted by the Superintendent of Police, BI(EO).

14. Be that as it may, most of the petitioners had submitted their replies to the said Show Cause notices. This aspect of the matter is clear from a reading of the orders of demand impugned in the various writ petitions. Interestingly, it is relevant to take note of that in the orders impugned in the various writ petitions issued by the Commissioner of Excise, there is no mention whatsoever

the reasons why the replies so submitted were found to be unsatisfactory. It further astonishes this Court that by the same order without even assigning any reasons, the maximum penalty of 300% have been imposed upon the petitioners. Therefore, being aggrieved, the petitioners are before this Court challenging the various impugned orders in the instant writ petitions on the following grounds:

- (i) The Show Cause notices so issued were completely vague and had no material particulars indicating as to what violations/transgressions the petitioners have committed.
- (ii) The Show Cause notices were based upon certain reports submitted by the Superintendent of Police, BI(EO), Guwahati. However, neither the inspection reports nor the contents of the inspection reports were furnished to the petitioners thereby the same violates the principles of natural justice.
- (iii) It is the further case of the petitioners that there was a joint inspection already carried out in pursuance to the order dated 29.08.2016 by a Committee constituted by the Governor of Assam. It is not the case of the respondent authorities in any of the pleadings or even in the Show Cause notice or the orders impugned that the reports submitted by the Joint Committee was erroneous or the said reports submitted were manipulated or were acts of fraud or collusion. It is therefore, the case of the petitioners that the said report could not have been overshadowed by a inspection report being carried by the Superintendent of Police, BI(EO) Guwahati. It was



submitted that as the entire exercise was carried out by the Commissioner of Excise on the basis of the inspection reports submitted by the Superintendent of Police, BI(EO) Guwahati, for which the entire exercise including the impugned orders are required to be set aside.

(iv) It was further submitted though in the affidavit filed in WP(C) No.4915/2017 dated 08.01.2021 by the Additional Commissioner of Excise that the total amount of Ad-valorem imposed was Rs.222,07,77,283/- and the total amount of VAT was Rs.144,01,11,882/- but only amount of Rs.128,43,07,236/- was deposited towards Ad-valorem and an amount of Rs.54,46,30,050/- was deposited towards the VAT, the remaining amount has not been paid inasmuch as the total amount was arrived at in terms with Clause-3 of the Office Order dated 29.08.2016 which also took into account non-consumable stocks which pursuant to the report of the chemical analysis were awaiting orders from the Excise Commissioner for being destroyed which is clear from the said Affidavit.

(v) It was further submitted that a perusal of the impugned orders would show total non-application of mind in as much as the Authority passing the impugned orders did not at all consider the replies so submitted. It was submitted that it is trite principle of law that when no reasons are assigned by the Authority in the impugned orders, the impugned orders are on

the face of it arbitrary and violative of Article 14 of the Constitution. Reference was drawn to the manner in which the Authority had disregarded the replies by stating that the replies were unsatisfactory without recording reasons why the replies were unsatisfactory. It was also submitted that the non application of the mind is also reflected from the fact that the maximum penalty have been imposed without assigning any reasons.

15. On the other hand, the learned Standing counsel appearing on behalf of the Excise Department submitted that the actions resorted to by the Excise Department by issuing the Show Cause notices upon the petitioners is on the basis of the inspection report submitted by the Superintendent of Police, BI(EO) Guwahati. The learned Standing counsel submitted that though in the Show Cause notice or even in the pleadings, there is no specific mention but there were discrepancies in the report submitted by the Joint Team as constituted by the Governor vide order dated 29.08.2016 and the inspection report of the Superintendent of Police, BI(EO) Guwahati and taking into account that huge revenue of the State have been underassessed on account of an incorrect inspection report of the Joint Team which had led to deprivation to the State of its legitimate entitlement, the respondent authorities have initiated the exercise in terms with the Show Cause notices. He further submitted that the respondents in their replies have only mentioned about the findings arrived at by the Joint Team but have not mentioned why there were discrepancies in the reports of the Joint Team as well as the inspection report of the Superintendent of Police, BI(EO) Guwahati and as such, as the petitioners herein having failed to explain the inconsistencies, the respondents more particularly the

Commissioner of Excise have rightly imposed the demand as well as the penalty of 300% upon the petitioners which is in accordance with the provisions of the Assam Excise Act, 2000 read with its Rules.

16. This Court have perused the materials on record and having heard the learned counsels at length, is of the opinion that broadly speaking three questions arises for consideration.

(i) Whether the opportunity of hearing given to the petitioners by issuing Show Cause notice was a reasonable opportunity without furnishing the copy of the Inspection Report which contained materials against the interest of the petitioners and the said Inspection Report being made the prime basis for passing the Impugned Orders?

(ii) If in the eventuality, this Court holds that the Show Cause notices issued were a reasonable opportunity then whether the impugned orders are liable to be interfered with?

(iii) To what relief/reliefs the parties are entitled to?

17. In view of the above three questions so formulated, let this Court first take into account the first question. The first question relates to whether the opportunity of hearing given to the petitioners by issuing Show Cause notice was a reasonable opportunity without furnishing a copy of the Inspection Report which contained the materials against the interest of the petitioners. At this stage, it is relevant to take note of that from a perusal of the impugned orders in all the writ petitions, it is apparent that the inspection reports so submitted by the Superintendent of Police BI(EO) were made the basis for passing the

impugned orders. Before arriving at the decision in respect to the question so formulated, let this Court take into account the law in that regard. The Supreme Court in the case of **Natwar Singh Vs. Director of Enforcement and Another reported in (2010) 13 SCC 255** had observed that the right to fair hearing is a guaranteed right. It was observed that every person before an authority exercising the adjudicatory powers has a right to know the evidence to be used against him. Further, it was also categorically observed that if relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing. It was further clarified in the said judgment by the Supreme Court that if prejudicial allegations are to be made against a person, he must be given the particulars of that before hearing so that he can prepare his defence. However, there were various exceptions to the general Rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to public interest because it would involve the revelation of officials secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in future. It was further observed in the said judgment that the concept of fairness require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue Show Cause notice and fair procedure and the principles of natural justice are in-built. It was further observed that a Noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In the said case, the Supreme Court taking into account the facts involved held that all such documents which were relied upon

the authority were required to be furnished to the Noticee enabling him to show a proper cause as to why the inquiry should not be held against him though the Rules do not provide for the same. It would further be seen from the said judgment that a reasonable opportunity of being heard is to be given when imposing of penalty after adjudication is fraught with grave and serious consequences. The Supreme Court further discerned a clear distinction between an opportunity of hearing given for the purpose of forming an opinion to conduct an inquiry and an opportunity of hearing given which may result in grave consequences. It was categorically observed that a proper hearing always includes, no doubt, a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their views. In paragraph No.36 of the said judgment, it was categorically observed that evidence as may be available upon which the adjudicating authority may place reliance, undoubtedly, is required to be furnished to the person proceeded against which would result in imposition of penalty with grave and serious consequences. Paragraph Nos. 30, 31, 34 and 36 of the said judgment being relevant are quoted hereinbelow:

*“30. The right to fair hearing is a guaranteed right. Every person before an authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognised by this Court in Dhakeswari Cotton Mills Ltd. v. CIT. However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The law is fairly well settled if prejudicial allegations are to be made against a person, he must be given particulars of*

*that before hearing so that he can prepare his defence. However, there are various exceptions to this general rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to the public interest because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in the future (see R. v. Secy. of State for Home Deptt., ex p H).*

**31.** *The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.*

**34.** *As noticed, a reasonable opportunity of being heard is to be provided by the adjudicating authority in the manner prescribed for the purpose of imposing any penalty as provided for in the Act and not at the stage where the adjudicating authority is required merely to decide as to whether an inquiry at all be held into the matter. Imposing of penalty after the adjudication is fraught with grave and serious consequences and therefore, the requirement of*

*providing a reasonable opportunity of being heard before imposition of any such penalty is to be met. In contradistinction, the opinion formed by the adjudicating authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences and therefore the minimum requirement of a show-cause notice and consideration of cause shown would meet the ends of justice. A proper hearing always include, no doubt, a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view.*

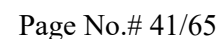
**36.** *In the present case, the inquiry against the noticee is yet to commence. The evidence as may be available upon which the adjudicating authority may place reliance, undoubtedly, is required to be furnished to the person proceeded against at the second stage of inquiry into allegations of contravention. It is at that stage, the adjudicating authority is not only required to give an opportunity to such person to produce such documents as evidence as he may consider relevant to the inquiry, but also enforce attendance of any person acquainted with the facts of the case to give evidence or to produce any document which in its opinion may be useful for or relevant to the subject-matter of the inquiry. It is no doubt true that natural justice often requires the disclosure of the reports and evidence in the possession of the deciding authority and such reports and evidence relevant to the subject-matter of the inquiry may have to be furnished unless the scheme of the Act specifically prohibits such disclosure."*

18. Prior to the said judgment in the case of **Natwar Singh (supra)**, the Supreme Court in the case of **Krishna Chandra Tandon Vs. Union of India** reported in **(1974) 4 SCC 374** was posed with the question as to whether there was a duty to disclose mere interdepartmental communications if they have been relied upon by the Enquiry Officer. The Supreme Court in the said judgment more particularly in paragraph No.16 observed that those documents which were in the nature of inter-departmental communications between

Officers preliminary to the holding of the enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusion. In that case, it would only be right that copies of the same should be given to the delinquent. Paragraph No.16 of the said judgment being relevant is quoted hereinbelow:

*“16. Mr Hardy next contended that the appellant had really no reasonable opportunity to defend himself and in this connection he invited our attention to some of the points connected with the enquiry with which we have now to deal. It was first contended that inspection of relevant records and copies of documents were not granted to him. The High Court has dealt with the matter and found that there was no substance in the complaint. All that Mr Hardy was able to point out to us was that the reports received by the CIT from his departmental subordinates before the charge-sheet was served on the appellant had not been made available to the appellant. It appears that on complaints being received about his work the CIT had asked the Inspecting Assistant Commissioner Shri R.N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent (emphasis supplied). It is not the case here that either the Enquiry Officer or the CIT relied on the report of Shri R.N. Srivastava or any other officer for his finding against the appellant. Therefore,*





19. This Court also finds it relevant to take note of paragraph No.15 of the judgment of the Supreme Court in the case of ***Khudiram Das Vs. State of West Bengal and Others*** reported in ***(1975) 2 SCC 81*** wherein the Supreme Court was posed with the question as to whether the detenu was entitled to certain documents/materials which even the Investigating Authority had denied placing reliance upon. The Supreme Court in the said judgment had opined that non-furnishing of such documents/materials which the District Magistrate had, which was highly of damaging character and having nexus and relevancy with the object of detention and the proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, has also to be furnished to the detenu. As it would be legitimate for the Court to infer that such materials must have influenced the District Magistrate in arriving at his subjective satisfaction and in such cases, the Court would refuse to accept the statement made by the Investigating Authority/District Magistrate that he did not take such material into account and excluded it from consideration. Paragraph No.15 of the said judgment being relevant is quoted hereinbelow.

*“15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions*

*from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention."*

20. It is also relevant to take note of another judgment of the Supreme Court in case of ***State Bank of Patiala and Others Vs. S. K. Sharma*** reported in (1996) 3 SCC 364 wherein another dimension of the compliance to the principles of natural justice was developed. The Supreme Court in the said judgment noted that if a facet of Rule of natural justice is violated on the grounds of preserving public interest, the entire proceeding is not vitiated unless prejudice has been caused to the delinquent. A distinction was made between the complete non-abidance of the principles of natural justice i.e. where there is no information disclosed and with arguments of insufficient disclosure. It was observed that the question of prejudice can be looked into when the Court has to determine the question of insufficient disclosure and not when there was a complete non-abidance of the principles of natural justice. Paragraph No.28 of the said judgment being relevant is quoted hereinbelow:

*“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India.) As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between “no notice”/“no hearing”*

*and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid."*

21. In another judgment of the Supreme Court in the case of **Kothari Filaments and Another Vs. Commissioner of Customs** reported in **(2009) 2 SCC 192**, the Supreme Court held that the Commissioner of Customs in exercise of its quasi judicial powers cannot pass an order on the basis of materials which is only known to the authorities. Paragraph Nos. 14 and 15 of the said judgment being relevant are therefore quoted hereinbelow:

*“14. The statutory authorities under the Act exercise quasi-judicial function. By reason of the impugned order, the properties could be confiscated, redemption*

*fine and personal fine could be imposed in the event an importer was found guilty of violation of the provisions of the Act. In the event a finding as regards violation of the provisions of the Act is arrived at, several steps resulting in civil or evil consequences may be taken. The principles of natural justice, therefore, were required to be complied with.*

**15.** *The Act does not prohibit application of the principles of natural justice. The Commissioner of Customs either could not have passed the order on the basis of the materials which were known only to them, copies whereof were not supplied or inspection thereto had not been given. He, thus, could not have adverted to the report of the overseas enquiries. A person charged with misdeclaration is entitled to know the ground on the basis whereof he would be penalised. He may have an answer to the charges or may not have. But there cannot be any doubt whatsoever that in law he is entitled to a proper hearing which would include supply of the documents. Only on knowing the contents of the documents, he could furnish an effective reply.*

22. In a very recent judgment passed by the Supreme Court in the case of **T. Takano Vs. Securities and Exchange Board of India and Another** reported in **(2022) 8 SCC 162** after making a copious detail of the law as laid down by the Supreme Court had culled down the principles in paragraph No.50 and its sub-paragraphs and observed that a quasi judicial authority has a duty to disclose the materials that has been relied upon at the stage of adjudication. It was further observed that the actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication. If it is, then the principles of natural justice requires its due disclosure. Paragraph 50 and its sub-paragraphs of the said judgment are quoted hereinbelow:

**“50.** *The following principles emerge from the above discussion:*

**50.1.** *A quasi-judicial authority has a duty to disclose the material that*

*has been relied upon at the stage of adjudication.*

**50.2.** *An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.*

**50.3.** *Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure."*

23. In the backdrop of the above law laid down and applying the same to the facts of the instant case, it would show that the Commissioner of Excise while issuing the Show Cause notices had mentioned that about the inspection report submitted by the Superintendent of Police BI(EO), Guwahati which formed the basis of the Show Cause notice. However, the said inspection report submitted by the Superintendent of Police BI(EO), Guwahati was not disclosed to the petitioners. It further appears from a perusal of all the impugned orders that it were the very inspection reports submitted by the Superintendent of Police, BI(EO), Guwahati, made the sole basis for adjudication and imposition of penalty. Now applying the law laid down by the Supreme Court as detailed hereinabove, this Court is of the opinion that there was non-compliance to the principles of natural justice for not disclosing the inspection reports submitted by the Superintendent of Police BI(EO), Guwahati to the respective petitioners and the Show Cause notice so issued cannot be said to be a reasonable opportunity of hearing. Under such circumstances, this Court therefore holds the first question so framed that the respondent authorities more particularly the Commissioner of Excise have failed to provide a reasonable opportunity of hearing before passing the orders impugned in the batch of writ petitions and

thereby have violated the principles of natural justice which in effect violates the mandate of Article 14 of the Constitution.

24. Let this Court take up the second question as to whether the impugned orders are liable to be interfered with. Taking into account the opinion of this Court as rendered in respect to the question No.1 that the impugned orders are in violation to the principles of natural justice and consequently are violative of Article 14 of the Constitution on that ground alone the impugned orders in the batch of writ petitions are liable to be interfered with. However, taking into account that there have been certain submissions made effect touching upon the impugned orders, this Court finds it also relevant to render its opinion on the impugned orders. A perusal of the impugned orders would clearly show that the Commissioner of Excise while passing the orders have not at all discussed or taken note of the replies or given any reasons for not taking into account the replies. What the Commissioner of Excise had done in passing the impugned orders have stated that the replies to be unsatisfactory. There is no quarrel with the well settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the Court where the validity of such orders is under challenge. In that regard, reference may be made to the judgment of the Supreme Court in the case of **Commissioner of Police Vs. Gordhandas Bhanji** reported in **AIR 1952 SC 16**. This Court also finds it relevant to make reference to the decision of Supreme Court in the case of **Mohinder Singh Gill and Another Vs. The Chief Election Commissioner** reported in **(1978) 1 SCC 405** wherein at paragraph No.8,



the Supreme Court observed as hereinunder:

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:*

*“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”*

*Orders are not like old wine becoming better as they grow older.”*

25. It is also relevant to take note of that Article 14 strikes at arbitrariness which is an antithesis of the guarantee contained in Article 14 and Article 16 of the Constitution. In the case of ***East Coast Railway and Another Vs. Mahadev Appa Rao and Others*** reported in **(2010) 7 SCC 678**, the Supreme Court while dealing with the concept of arbitrariness observed at paragraph No.23 as hereinunder:

*“23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained.*



*Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."*

26. In the backdrop of the above law and taking into account that the Commissioner of Excise vide the impugned orders have rejected the replies without stating the reasons as to why the Commissioner of Excise found it to be unsatisfactory and that too without discussing the contents of the replies, this Court is of the opinion that the impugned orders are arbitrary and accordingly in violation of Article 14 of the Constitution.

27. This Court further would like to deal with another aspect of the matter in respect to the impugned orders whereby the Commissioner of Excise had automatically applied the maximum penalty upon the petitioners. No reasons have been assigned why the maximum penalty have been imposed. In the backdrop of the same, this Court finds it relevant to take note of Rule 342(b) of the Rules of 2016 and the same is reproduced hereinunder:

*"342(b)      **Penalty for non-payment of duty or fee:-** If any person or any licence holder under this Rules fails to pay any duty, fee or any other levy due to the Government, which under this Rule he is liable to pay and for which he has received due notice from the Excise Commissioner or a Collector, shall be liable to pay a penalty which may extend to three hundred percent of the duty, fee or other levies due from him."*

28. A reading of the above Rule would clearly show that if any person or any

licence holder under the Rules of 2016 fails to pay any duty, fee or any other levy due to the Government which under the said Rule, he is liable to pay and for which he has received due notice from the Excise Commissioner or a Collector, shall be liable to pay a penalty which may extend to 300% of the duty, fee or other levies due from him. In the opinion of this Court, the question of penalty in terms with Rule 342(b) would apply when the person or any licence holder under the Rules receives due notice that he is liable to pay any duty, fee or any other levy due to the Government. In the instant case, it would be seen that by the same order, the Commissioner of Excise had not only fixed a particular amount as the duty and/or levy to be paid by the petitioners but also by the same order without issuing a notice have imposed maximum penalty of 300%. It further appears from the said Rule 342(b) that the maximum penalty which can be levied is up to 300% of the duty, fee or levy due from the person. Therefore, from the very language, it is apparent that the imposition of maximum penalty of 300% is not automatic, it would depend upon the facts and circumstances of each case. At this stage, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of ***Trustees of H.C. Dhanda Trust Vs. State of Madhya Pradesh and Others*** reported in **(2020) 9 SCC 510** wherein the Supreme Court was dealing with the question as to whether the imposition of the maximum penalty was automatic. The Supreme Court observed that the purpose of penalty generally is a deterrence and not retribution. When a public authority is given a discretion, such public authority should exercise such discretion reasonably and not in an oppressive manner. It was observed that the responsibilities to exercise the discretion in a reasonable manner lies more in cases where the discretion is vested by the statute is unfettered. It was further observed that the imposition of the extreme penalty

cannot be based on mere factum of evasion of duty. The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at the decision as to what should be the extent of penalty. The Supreme Court further taking into account that the reasons assigned by the Collector or even by the High Court justifying the imposition of maximum penalty of 10 times were not justifiable for which the Supreme Court had interfered with the imposition of maximum penalty. Paragraph 22 and 23 of the said judgment being relevant is quoted hereinbelow:

*“22. The purpose of penalty generally is a deterrence and not retribution. When a discretion is given to a public authority, such public authority should exercise such discretion reasonably and not in oppressive manner. The responsibility to exercise the discretion in reasonable manner lies more in cases where discretion vested by the statute is unfettered. Imposition of the extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on the mere factum of evasion of duty. The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b).*

*23. We may refer to the judgment of this Court in Peteti Subba Rao v. Anumala S. Narendra. This Court had occasion to consider in the above case provisions of Section 40 of the Stamp Act, 1899. Referring to Section 40 this Court made the following observation in para 6: (SCC p. 429)*

*“6. ... The Collector has the power to require the person concerned to pay the proper duty together with a penalty amount which the Collector has to fix in consideration of all aspects involved. The restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty amount shall go beyond ten times the duty or the deficient portion thereof. That is the farthest limit which meant only in very extreme situations the penalty need be imposed up to that limit.*

*It is unnecessary for us to say that the Collector is not required by law to impose the maximum rate of penalty as a matter of course whenever an impounded document is sent to him. He has to take into account various aspects including the financial position of the person concerned."*

29. In the instant case, it would be seen that the Commissioner of Excise by the impugned orders have without any reasons imposed the maximum penalty of 300% which in the opinion of this Court could not have been done so without assigning proper reasons justifying such imposition. In that view of the matter, the imposition of maximum penalty is also arbitrary and unreasonable being without any justification.

30. In the backdrop of the above, let this Court therefore consider the third question so framed as to what relief/reliefs the parties are entitled to. This Court (supra) have already held that the impugned orders in the batch of the writ petitions are in violation to the principles of natural justice, arbitrary, unreasonable and also violates the mandate of Article 14 of the Constitution. Therefore, all the impugned orders in the various batch of writ petitions to which this Court in detail would be referring to infra are set aside and quashed.

31. A further question therefore arises as to whether by quashing the impugned orders, should this Court bring a quietus to the issue involved? This Court finds it relevant at this stage to take into account the submission made by the learned counsel appearing on behalf of the Excise Department wherein upon a specific query being made by this Court as to whether it is feasible at this stage after a passage of 6 years for the authorities to be given a liberty to take action in terms with the inspection report so submitted by the Superintendent of Police BI(EO). The learned Standing counsel appearing on behalf of the Excise

Department submits that prior to coming into effect the Act of 2010 and the Rules framed thereunder, the bonded warehouses deposited as well as stored their spirits without payment of any duty. However, with the coming into effect of the Act of 2000 and the Rules framed thereunder, the petitioners who were running their business then as bonded warehouse has now become wholesale warehouses and as such they are therefore required to deposit or store spirits in respect to which duty/levy has already been paid. He further submits that there are registers/documents available which are required to be maintained in terms with the Rules of 2016 which would clearly evidence removal of stocks in respect of which the duty/levy have been paid. Therefore, it is the submission of the learned Standing counsel appearing on behalf of the Excise Department that if the Court grants the liberty, the Department of Excise in association with the Officials of BI(EO) can carry out inspections as to whether there still remains deposits or storage of spirits in respect to which duty has not been paid in the wholesale warehouses of the petitioners and in that process, if it is so found due action may be taken by the Excise Department in addition to the action which the Department can still take on the basis of the Inspection Report of the BI(EO).

32. This Court in passing the instant judgment have neither decided the correctness of the inspection so carried out by the Joint Team constituted on the basis of the orders of the Governor dated 29.08.2016 nor have also decided the correctness of the inspection reports submitted by the Superintendent of Police BI(EO). This Court have interfered with the impugned orders on the basis of violation of the principles of natural justice, the impugned orders being arbitrary, unreasonable and being in violation to the mandate of Article 14 of the Constitution. Therefore, this Court does not see any reason, more so, when the

question of depriving the revenue by way of alleged fraud or deceit or undue enrichment still remains to be decided, to disentitle the Department of Excise to carry out such inspections in association with the Officials of Bureau of Investigation of Economic Offences (BIEO). Accordingly, all the writ petitions disposed of in the following manner.

**(A) WP(C) No.1762/2017**

The Show Cause notice dated 13.12.2016 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 01.02.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.3,03,95,977/- have been imposed as Ad-valorem duty and Rs.9,11,87,931/- imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.12,15,83,908/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(B) WP(C) No.1771/2017**

The Show Cause notice dated 13.12.2016 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 01.02.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.2,81,18,246/- have been imposed as Ad-valorem duty and Rs.8,43,54,738/- imposed as

penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.11,24,72,984/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(C)**

**WP(C) No.1838/2017**

The Show Cause notice dated 13.12.2016 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 01.02.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.72,37,870/- have been imposed as Ad-valorem duty and Rs.2,17,13,611/- imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.2,89,51,481/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(D)****WP(C) No.1873/2017**

The Show Cause notice dated 12.01.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 09.02.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.5,82,34,255.17p have been imposed as Ad-valorem duty and Rs.17,47,02,765.5p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.23,29,37,021/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(E)****WP(C) No.2567/2017**

The Show Cause notice dated 18.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 03.04.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.30,08,935.73p have been imposed as Ad-valorem duty and Rs.90,26,807.19p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.1,20,35,743/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioner on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have



the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioner in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**(F) WP(C) No.2591/2017**

The Show Cause notice dated 18.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 23.03.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.2,88,57,257.52p have been imposed as Ad-valorem duty and Rs.8,65,71,772.56p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.11,54,29,030/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioner on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioner in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**(G) WP(C) No.2780/2017**

The Show Cause notice dated 18.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 31.03.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.15,24,510.10p have been imposed as Ad-valorem duty and Rs.45,73,530.30p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.60,98,040.40/- is set aside and quashed. This Court however

gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioner on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioner in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(H) WP(C) No.3070/2017**

The Show Cause notice dated 18.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 12.04.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.1,72,59,422.95p have been imposed as Ad-valorem duty and Rs.5,17,78,268.85p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.6,90,37,692/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(I) WP(C) No.3962/2017**

The Show Cause notice dated 18.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 15.05.2017 issued by

the Commissioner of Excise, Assam whereby a demand of Rs.35,05,020.77p have been imposed as Ad-valorem duty and Rs.1,05,15,062.31p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.1,40,20,083/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(J)****WP(C) No.4915/2017**

The Show Cause notice dated 06.02.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 14.07.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.1,33,92,835.82p have been imposed as Ad-valorem duty and Rs.4,01,78,507.46p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.5,35,71,343/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(K)****WP(C) No.4921/2017**

The Show Cause notice dated 06.02.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 14.07.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.1,04,44,016.72p have been imposed as Ad-valorem duty and Rs.3,13,32,050.16p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.4,17,76,067/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioner on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioner in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(L)****WP(C) No.4922/2017**

The Show Cause notice dated 07.02.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 14.07.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.56,90,339.66p have been imposed as Ad-valorem duty and Rs.1,70,71,018.98p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.2,27,61,359/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioner on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have

the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioner in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**(M)**

**WP(C) No.4923/2017**

The Show Cause notice dated 07.02.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 02.03.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.2,57,06,976.07p have been imposed as Ad-valorem duty and Rs.7,71,20,928.21p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.10,28,27,904/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**(N)**

**WP(C) No.4924/2017**

The Show Cause notice dated 12.01.2016 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 14.07.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.58,52,231.61p have been imposed as Ad-valorem duty and Rs.1,75,56,694.83p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.2,34,08,926/- is set aside and quashed. This Court however gives

the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**(O) WP(C) No.5036/2017**

The order dated 19.07.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.21,85,857.27p have been imposed as Ad-valorem duty and Rs.65,57,571.81p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.87,43,429/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**(P) WP(C) No.5048/2017**

The Show Cause notice dated 29.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 15.05.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.6,82,35,397.75p

have been imposed as Ad-valorem duty and Rs.20,47,06,193.30p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.27,29,41,591/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(Q)**

**WP(C) No.5174/2017**

The Show Cause notice dated 02.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 14.07.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.18,28,952.60p have been imposed as Ad-valorem duty and Rs.54,86,857.80p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.73,15,810/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereunder.

**(R)****WP(C) No.5514/2017**

The Show Cause notice dated 07.03.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 22.03.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.6,66,485.75p have been imposed as Ad-valorem duty and Rs.19,99,457.25p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.26,65,943/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioners on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioners in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**(S)****WP(C) No.2290/2018**

The Show Cause notice dated 12.01.2017 issued by the Commissioner of Excise, Assam is set aside and quashed. The order dated 07.03.2017 issued by the Commissioner of Excise, Assam whereby a demand of Rs.31,29,559.57p have been imposed as Ad-valorem duty and Rs.93,88,678.71p imposed as penalty @300% in terms with Rule 342(b) of the Assam Excise Rules, 2016 totaling to Rs.1,25,18,238/- is set aside and quashed. This Court however gives the liberty to the respondent Excise Department to issue fresh Show Cause notice to the petitioner on the basis of the materials available with them after making due disclosure and thereupon to proceed in accordance with law. Prior to issuance of the notice, the respondent Excise Department would also have





the liberty to make further inspection with/without the association of the Officials of BI(EO) in the wholesale warehouse of the petitioner in accordance with the provisions of the Act of 2000 and the Rules framed thereinunder.

**JUDGE**

**Comparing Assistant**