Case Citation: (2026) taxcode.in 1324 HC

RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 18915/2024

Rajasthan High Court
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1. M/s Gyankeer Tobacco Products Pvt. Ltd., Having its Registered Office At NH 8, Upli Oden, Nathdwara, Rajsamand-313301, Rajasthan, Through Its Authorized Signatory Shri Suresh Kumar Keer, S/o Devi Lal Keer, Aged About 39 Years, R/o Upla Chorahya, Upali Odan, Rajsamand, Rajasthan-313301.
2. Suresh Kumar Keer, Director Of M/s Gyankeer Tobacco Products Pvt. Ltd., S/o Devi Lal Keer, Aged About 39 Years, R/o Upla Chorahya, Upali Odan, Rajsamand, Rajasthan-313301.

----Petitioners

Versus

1. Additional Commissioner, Central Excise And Central Goods and Services Tax Commissionerate, H-Block, 100 Feet Road, Sector-14, Hiran Magri, Udaipur, Rajasthan.
2. Rajasthan Appellate Authority For Advance Ruling, Goods And Service Tax, NCR Buidling, Statute Circle, C-Scheme, Jaipur, Rajasthan-302005.
3. Rajasthan Authority For Advance Ruling, Goods and Services Tax, Kar Bhawan, Ambedkar Circle, Near Rajasthan High Court, Jaipur, Rajasthan-302005.
4. Deputy Commissioner, State Tax, Zone-Bhilwara, Circle-II, Commercial Taxes Department, Rajasmand, Rajasthan

----Respondents

For Petitioner(s)	:	Mr. Sanjay Jhanwar, Sr. Advocate assisted by Mr. Falgun Buch Mr. Prateek Gattani Mr. Gopal Krishan Chhangani Mr. Vishal Singh Mr. Rahul Lakhwani Mr. Wilson Joy
For Respondent(s)	:	Mr. Mahaveer Bishnoi, AAG with Mr. Harshvardhan Singh Mr. Rajvendra Saraswat with Mr. Rishabh Dadhich Mr. Jitesh Kumar Suthar

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RAJASTHAN HIGH COURT

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Judgment

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1.	Date of Conclusion of Arguments :	25.02.2026
2.	Date on which judgment was reserved :	25.02.2026
3.	Whether the full judgment or only operative part is pronounced :	Full
4.	Date of pronouncement :	16.04.2026

Per: Baljinder Singh Sandhu, J.

FACTS OF THE CASE

1. The instant petition is filed by the petitioner challenging the validity of the impugned show cause notices both dated 8th August 2024 issued by the Additional Commissioner, Central Excise and Central Goods Services Commissionerate, Udaipur (herein after referred to as Respondent No. 1) under Section 74 of the Central Goods and Services Act, 2017 (hereinafter referred to as CGST Act) and Section 11A with 11AA and 11AC of the Central Excise Act, 1944 (hereinafter referred to as Central Excise Act) proposing the demand of GST of Rs. 195,06,61,336/- and Central Excise Duty of Rs. 71,34,39,871/- along with interest and equivalent penalty.

2. The brief facts leading to filing of the petition are that the Petitioner filed an application for Advance Ruling under Section 97 of the Rajasthan Goods and Services Act (hereinafter referred to as RGST Act) before Rajasthan Authority For Advance Ruling,

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Goods And Services Tax, Jaipur (hereinafter referred to as AAR) seeking an Advance Ruling with respect to the classification of its product as unmanufactured tobacco pre-mixed with lime (i.e., supplied without lime tube) under the brand name 'Keer Kokil' (the Product intended to be sold by the Petitioner) under GST and the rate of GST and Compensation Cess applicable on the same. In the Advance Ruling Application and vide its letters dated 09th May 2022 and 16th May 2022, the Petitioner stated that the Product is unmanufactured tobacco pre-mixed with lime along with addition of certain aroma and menthol for freshness and to avoid bad smell, prepared either using machines or manually.

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3. Deputy Commissioner, State Tax, Commercial Taxes Department, Rajsamand (hereinafter referred to as Respondent No. 4), being the Jurisdictional Officer of the Petitioner, vide letters dated 18th January 2022 and 10th May 2022 submitted its comments that the Product falls under the category of unmanufactured tobacco without lime tube and that the Product would be supplied to the customers pre-mixed with lime and there will be no change in the tobacco leaves in the process.

4. AAR passed the Advance Ruling dated 1st June 2022 declaring that the Product is 'unmanufactured tobacco' classifiable under CTH 24012090- 'Others', attracting GST at 28% and Compensation Cess at 71%.

5. After elapse of about eleven months' time, Respondent No.1 initiated an investigation against the Petitioner on the allegation that the Petitioner was not preparing the Product as per the Advance Ruling.

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6. Thereafter, Respondent No. 1 filed a complaint/letter dated 4th May 2023 before AAR alleging that the Petitioner was misusing the Advance Ruling and therefore, alleging that the Advance Ruling was obtained by misrepresentation and suppression of facts.

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7. To which the AAR passed an order dated 10th July 2023 rejecting the complaint/letter dated 4th May 2023 of Respondent No. 1 and re-confirmed the Advance Ruling holding that all the material facts and information were placed on record before the AAR.

8. Thereafter, Respondent No. 1 filed an appeal before Rajasthan Appellate Authority for Advance Ruling, Goods and Service Tax, Jaipur (hereinafter referred to as Appellate Authority) under Section 100 of CGST Act against the order dated 10th July 2023 passed by AAR was dismissed due to the reason that the provisions of CGST Act do not provide for appeal against order in review passed by AAR under Section 104.

9. Eventually, Respondent No. 1, invoking Section 74 of the CGST Act as well as Section 11A of the Central Excise Act, issued the Impugned Show Cause Notices proposing the demand of GST and Central Excise Duty on the same allegations that were raised before AAR and Appellate Authority that the Advance Ruling was obtained by fraud, misrepresentation and suppression of facts.

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. At the outset it is submitted by the counsel for the petitioner that the petitioner is a bona fide, tax-compliant entity that has

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consistently discharged GST in accordance with the Advance Ruling, which classified its product as 'unmanufactured tobacco' under CTH 2401 2090-"others", attracting 28% GST and 71% Compensation Cess. At the time of seeking the ruling, the petitioner had made full and complete disclosure of all relevant facts, including the manufacturing process, use of machines, and addition of aroma and menthol. These aspects were specifically examined by both the AAR and the jurisdictional officer, who concurred that such processes do not alter the essential character of the product. It is stated that even the Respondent No. 4, being the Jurisdictional Officer of the Petitioner, in his comments recognised use of machines and stated that there will be no change in the nature of the Product after adding a little aroma and menthol.

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11. The Advance Ruling, having been passed after due consideration, attained finality as it was not challenged within the prescribed limitation. The department subsequently attempted to invoke Section 104, based upon a search conducted by the Department at the business/registered premises of the petitioner on 25th April 2023, to declare the ruling void on allegations of fraud, suppression, and misrepresentation, however, the AAR categorically rejected these allegations, holding that there was no failure of disclosure on the part of the petitioner. The appeal preferred thereafter was also dismissed as not maintainable, thereby reaffirming the finality of the ruling.

12. Despite having failed in the aforesaid proceedings, the very same jurisdictional officer who had filed application under Section

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104 before AAR, and had filed the appeal under Section 100, has issued the impugned show cause notices under Section 74 on identical grounds, alleging misclassification of the product as manufactured chewing tobacco. This action, in effect, amounts to a collateral and impermissible challenge to a binding Advance Ruling as well as to prior adjudicatory orders that have already attained finality.

13. In the absence of any fresh material or any established fraud or suppression, the essential jurisdictional preconditions for invoking Section 74 are clearly not satisfied. The impugned notices, therefore, are without jurisdiction, contrary to settled legal principles, and constitute a clear abuse of process.

SUBMISSIONS OF BEHALF OF THE RESPONDENTS

14. Learned counsel for the respondents has raised a preliminary objection to the maintainability of the writ petition, submitting that only show cause notices have been issued and no final decision has yet been taken. The petition is therefore premature, and the petitioner has the remedy of filing a reply and availing statutory remedies. It is further submitted that the matter involves disputed questions of fact regarding the actual manufacturing process adopted by the petitioner, which ought to be examined by the adjudicating authority and not in writ jurisdiction. On these grounds, the writ petition deserves dismissal.

15. It is further submitted that GST authorities are empowered to initiate investigation where there is reason to believe that

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material facts were suppressed or misrepresented. The department is entitled to verify whether the Advance Ruling is being correctly followed and to reclassify goods if additional or undisclosed ingredients or processes amount to a substantial deviation. Classification depends on the actual manufacturing process and product characteristics, irrespective of earlier declarations, and such action does not require setting aside the Advance Ruling but is part of lawful tax administration.

16. It is also submitted that the show cause notices have been issued strictly in accordance with the GST law to address discrepancies, notwithstanding prior rulings. An Advance Ruling does not bar fresh proceedings where subsequent facts indicate non-compliance or misrepresentation. Use of machines and addition of aroma or menthol, if not disclosed, constitute valid grounds for investigation and reclassification, amounting to fraud or suppression. The notices are based on fresh findings and are distinct from earlier proceedings, justifying invocation of Section 74 of the GST Act and Section 11A of the Central Excise Act.

17. The counsel contends that although the petitioner obtained an Advance Ruling classifying its product 'Keer Kokil' as unmanufactured tobacco under CTH 2401 2090-"others", it was subsequently found that the petitioner is manufacturing tobacco using machines and adding substances such as nutmeg aroma and mentha oil. This, according to the respondents, changes the nature of the product, bringing it within the category of manufactured chewing tobacco, different from what was presented before the AAR.

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18. It is further submitted that the use of machines and additional ingredients, allegedly not disclosed earlier, constitutes a substantial deviation justifying investigation and reclassification. Based on samples collected, the department asserts that the product is manufactured chewing tobacco falling under CTH 2403 9910. Hence, the department has validly exercised its statutory powers based on findings of misrepresentation, and the petitioner should avail the alternative remedy. Accordingly, the petition deserves to be dismissed.

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ANALYSIS AND FINDINGS

19. Heard learned counsel for the parties and perused the material available on record. The Court has given thoughtful consideration to the rival submissions advanced on behalf of the petitioner as well as the respondents.

20. At the first instance, we consider the preliminary objections raised by the Respondents about the maintainability of the writ against the show cause notice and an alternate remedy being available to the petitioner of approaching the department.

21. The Hon’ble Apex Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Hence, the mere fact that the petitioner before this court, in the given case, has not pursued the alternative remedy available to him cannot mechanically be construed as a ground for

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its dismissal. A Constitutional Bench of the Hon'ble Apex Court in the case of **State of Uttar Pradesh vs. Mohd. Nooh**[1] has observed as under :-

> "10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, the fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

22. In the recent judgment passed in **J. Sri Nisha Vs. The Special Director**[2], the Hon'ble Apex court relying on **Union Of India Vs. VICCO Laboratories**[3], has clearly held that interference at the stage of SCN is permissible where the notice suffers from patent lack of jurisdiction, reflects non-application of mind, is issued with a pre-determined or premeditated approach, amounts to an abuse of the process of law, or results in a violation of the principles of natural justice. It has been observed as under :-

> "32. Thus, a prima facie satisfaction was recorded by the Competent Authority that there was no evidence of the appellants being involved in foreign security transactions having any value. Consequently, it has to be taken that there did not exist the "reasons to believe" referred to in Sub-section (1) of Section 37A. These findings definitely support the cause of the appellants herein. It is not in dispute that the appeal preferred by the Department against the order dated 3rd February, 2021, is still pending consideration. The Division Bench of the High Court, while

1 1958 SCR 595
2 2026 INSC 309
3 (2007) 13 SCC 270

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deciding the writ appeal, observed that the writ petition against the SCN is not entertainable. We feel that the said observation may not be correct in every situation. This Court has consistently held that although ordinarily a writ petition against an SCN may not be entertained, however, the said proposition is not an inviolable rule. Interference at the stage of SCN is permissible in exceptional circumstances, such as where the notice suffers from patent lack of jurisdiction, reflects non-application of mind, is issued with a pre-determined or premeditated approach, amounts to an abuse of the process of law, or results in a violation of the principles of natural justice. In such situations, the High Court would be justified in exercising its jurisdiction under Article 226 of the Constitution to prevent manifest injustice. In this context, we may gainfully refer to the following observations from Union of India v. VICCO Laboratories :-

> "31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."

23. In the present case, the petitioner contends that the impugned show cause notices have been issued on grounds which were already considered by the Authority for Advance Ruling, and that proceedings under Section 104 as well as the appellate proceedings have culminated against the Revenue. Prima facie, these submissions raise a substantial issue as to whether the

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impugned notices seek to reopen matters that have already attained finality.

24. In such circumstances, and in view of the settled position of law that a writ petition is maintainable where a show cause notice is alleged to be without jurisdiction, issued with a pre-determined approach, or amounts to an abuse of process of law, this Court finds it appropriate to entertain the present writ petition. This is particularly so when the challenge pertains to the very assumption of jurisdiction under Section 74 of the CGST Act on facts already adjudicated and having attained finality.

25. The objection regarding disputed questions of fact does not merit acceptance, in as much as the foundational facts relating to the manufacturing process, use of machines, and addition of aroma and menthol were already placed before and considered by the Authority for Advance Ruling as well as in proceedings under Section 104. The present case does not involve any fresh factual adjudication but an attempt to revisit settled issues. Accordingly, the preliminary objections raised by the respondents are rejected, leaving the merits of the case to be considered hereinafter.

26. Having dealt with the preliminary objections, the principal issue that arises for consideration is whether, in the absence of any material establishing fraud, willful misstatement or suppression of facts, the respondent could have assumed jurisdiction under Section 74 of the CGST Act and Section 11A of the Central Excise Act and issued the impugned show cause notices, notwithstanding a binding Advance Ruling.

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27. Section 103 of CGST Act provides that any Advance Ruling passed by any Authority for Advance Ruling or Appellate Authority for Advance Ruling shall be applicable on the applicant (the Petitioner in the present case) and the concerned officer or the jurisdictional officer, unless there is a change in law or in the facts and circumstances on which the Advance Ruling was based.

28. The Advance Ruling mechanism is intended to provide certainty and clarity to taxpayers regarding their tax liability in advance, thereby enabling them to structure their transactions in accordance with law. It serves as a mechanism to resolve potential disputes at an early stage and reduce unnecessary litigation. The binding nature of such rulings on both the applicant and the jurisdictional authorities reflects the legislative intent to ensure consistency and finality in tax administration. Any attempt to reopen issues already settled, in the absence of any change in law or facts, would defeat the object of the scheme. Therefore, unless the conditions under Section 104 are satisfied or there is a change in facts or law, the binding effect of the Advance Ruling cannot be disregarded.

29. The Hon'ble Apex Court in **National Cooperative Development Corporation vs. CIT**[4] emphasized that a robust Advance Ruling system reduces litigation and promotes tax certainty, and cautioned that it should not become another stage of litigation. It was held as under :-

> "55. In our opinion, a vibrant system of Advance Ruling can go a long way in reducing taxation litigation. This is not only true of these kinds of disputes but even disputes between the taxation department and private persons, who are more than willing to comply with the law of the land but

4 (2021) 11 SCC 357

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> find some ambiguity. Instead of first filing a return and then facing consequences from the Department because of a different perception which the Department may have, an Advance Ruling System can facilitate not only such a resolution, but also avoid the tiers of litigation which such cases go through as in the present case. In fact, before further discussing this Advance Ruling System, we can unhesitatingly say that, at least, for CPSEs and Government authorities, there would be no question of taking this matter further once an Advance Ruling is delivered, and even in case of private persons, the scope of any further challenge is completely narrowed down.
>
> ……..
>
> 63. The aim of any properly framed Advance Ruling system ought to be a dialogue between taxpayers and Revenue Authorities to fulfill the mutually beneficial purpose for taxpayers and Revenue Authorities of bolstering tax compliance and boosting tax morale. This mechanism should not become another stage in the litigation process."

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30. A plain reading of Section 74 of the CGST Act makes it evident that the assumption of jurisdiction itself is conditional upon the existence of fraud, willful misstatement or suppression of facts with intent to evade tax. Section 11A of the Central Excise Act, 1944 also contains an analogous provision, and the same principles regarding fraud, willful misstatement or suppression of facts equally apply. The Hon'ble Supreme Court in **Continental Foundation Joint Venture Holding vs. Commissioner of Central Excise**[5] has held that such suppression or misstatement must be willful and with intent to evade duty. The Court held as under :-

> "11. We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence mens rea.
>
> 12. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the

5 (2007) 10 SCC 337

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> parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making an incorrect statement with the knowledge that the statement was not correct.
>
> .....
>
> 14. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis- statement or suppression of facts are concerned, they are clearly qualified by the word 'willful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not willful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be willful."

31. Thus, the existence of fraud, willful misstatement or suppression of facts is not merely a matter for adjudication, but constitutes a jurisdictional pre-condition for invoking Section 74 of the CGST Act. While it is true that the department is not precluded from initiating proceedings where there is a genuine change in facts or discovery of new material, such power cannot be exercised to re-open or re-agitate issues which have already been examined and conclusively decided by a competent authority.

32. In the present case, upon consideration of the record, it is evident that the petitioner is complying with the Advance Ruling and paying tax accordingly. The allegation of fraud, misrepresentation and suppression of facts, forming the basis of the impugned show cause notices, was specifically raised by the department in proceedings under Section 104 of the CGST Act and has been conclusively examined and rejected by the Authority for Advance Ruling vide order dated 10th July 2023, which has attained finality.

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33. In such circumstances, the Revenue cannot be permitted to re-agitate the very same allegations on the same set of facts, in the absence of any demonstrable fresh material. This is not a case where sufficiency of material is to be examined, rather it is a case where the foundational allegation itself stands negated by a competent authority. Consequently, the assumption of jurisdiction under Section 74 of the Act is unsustainable in law.

34. The contention of the respondents that the impugned notices are based on "fresh findings" is not borne out from the record, as the very allegations regarding use of machines and addition of aroma and menthol had already been specifically considered in the Advance Ruling as well as in proceedings under Section 104. The case of M/s Kavicut Tobacco was also duly considered and distinguished by the Authority for Advance Ruling, wherein it was categorically held that mixing lime with tobacco leaves and addition of volatile flavours does not render unmanufactured tobacco into manufactured tobacco. Thus, the respondents' plea of "fresh findings" stands unsubstantiated.

35. Thus, the issuance of the impugned show cause notices reflects an attempt to reopen issues which have already attained finality, without any legal basis. Such an exercise is contrary to the scheme of the statute and cannot be sustained. It is also in violation of the settled principle that a subordinate authority is bound by the findings of a higher or competent authority, unless such findings are set aside in accordance with law. The Hon'ble Supreme Court in **Union of India v. Kamalakshi Finance**

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Corporation[6] has held that the principles of judicial discipline require that orders of appellate authorities must be followed unreservedly by subordinate authorities :-

> "6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual malafides but with the fact that the officers, in reaching in their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.
>
> 7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35-E confers adequate powers on the department in this regard. Under Sub-section (1), where the Central Board of Direct Taxes come across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under Sub-section(2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with this legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise

6 AIR 1992 SC 711

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in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under Section.35-E (1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail.

8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assesses-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."

36. The record reveals that no finding of fraud, willful misstatement, or suppression of facts has been recorded at any stage. In the facts of the present case, no such inference can be drawn, particularly when all material facts stood disclosed and there is no indication of any intent to evade tax. In such circumstances, the jurisdictional requirements for invoking Section 74 of the CGST Act are not satisfied.

37. That apart, it is evident from the Advance Ruling dated 1st June 2022, and the Order dated 10th July 2023 that AAR, as well

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as Respondent No. 4, were aware of both the processes involved in the preparation of the Product, that is, machine-based and manual and also about use of aroma and menthol, and both have concluded that the Product is 'unmanufactured tobacco'. It has been categorically held that the process of mixing of lime and tobacco and coating of aroma/menthol does not alter the raw tobacco, and the product remains 'unmanufactured tobacco' only. The method of preparation, whether manual or machine-based, also does not alter the nature of the product, which remains unmanufactured tobacco pre-mixed with lime. Thus, the very basis for invoking Section 74 does not survive, and the present proceedings constitute an impermissible attempt to circumvent the binding effect of the said ruling.

38. It is well settled that when a statutory provision confers jurisdiction subject to fulfillment of certain conditions, the existence of such conditions is a sine qua non for valid assumption of jurisdiction. In the present case, the material relied upon has already been considered and decided, and in the absence of any fresh material, the impugned show cause notices are without jurisdiction and liable to be quashed at the threshold.

39. In view of the foregoing analysis, this Court is of the considered opinion that the jurisdictional conditions required under Section 74 of the CGST Act as well as Section 11A of the Central Excise Act are not satisfied. The attempt to revive allegations of fraud and suppression, which already stand rejected and have attained finality, is impermissible in law. The impugned show cause notices, therefore, cannot be sustained.

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40. Accordingly, the present writ petition is allowed. The impugned show cause notices dated 8th August 2024 issued by Respondent No. 1 under Section 74 of the CGST Act and Section 11A of the Central Excise Act, are hereby quashed and set aside as being without jurisdiction. No order as to costs.

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(BALJINDER SINGH SANDHU),J **(SANJEEV PRAKASH SHARMA), ACJ**

S/1 ms rathore

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