Additional Commissioner, Grade-I (Appeal)

अतिरिक्त आयुक्त, ग्रेड-1 (अपील)

Department of State Taxes & Excise,

राज्य कर एवं आबकारी विभाग,

B-29, SDA complex, Kasumpti, Shimla-9

बी-29,एस डी ए परिसर, कुसुमप्टी, शिमला-9

Himachal Pradesh (हिमाचल प्रदेश)

Subject (विषय) :- **हिमाचल प्रदेश वस्तु एवं सेवा कर अधिनियम, 2017 की धारा 107 (11) के अंतर्गत श्री राकेश शर्मा, अतिरिक्त आयुक्त, ग्रेड-1 (अपील) द्वारा पारित आदेश ।**

To **(सेवा में),**

M/s Jai Ambey Bharat Gas
Address- 1st Floor , Uma Sadan , Near Sankatmochan ,
Taradevi Road , Badhawani , Shimla ,
Himachal Pradesh , 171011
GSTIN 02AZAPK7139F1ZQ

Sir/ Madam (**श्री/श्रीमती**),

Please find enclosed a copy of the order passed by Sh. Rakesh Sharma, Additional Commissioner (Gr.-I) cum Appellate Authority, GST, HP, regarding your appeals listed from Sr. No. 1 to 2.

(श्री राकेश शर्मा, अतिरिक्त आयुक्त, ग्रेड-1 एवं अपीलीय प्राधिकारी, जीएसटी, हिमाचल प्रदेश द्वारा आपकी अपील के संबंध में पारित आदेश की प्रति प्राप्त करें।)

You are also requested to go through the Notes for guidance detailed as under:

(कृपया उचित मार्गदर्शन हेतु नीचे दी गई टिप्पणी देखें):

मार्गदर्शन के लिए टिप्पणी:-

1. **यह अपील आदेश हिमाचल प्रदेश वस्तु एवं सेवा कर अधिनियम, 2017 की धारा 107 के अंतर्गत पारित किया गया है।**

   This appeal order has been passed under section 107 of the Himachal Pradesh Goods and Services Tax Act, 2017.

2. **यदि कोई व्यक्ति हिमाचल प्रदेश वस्तु एवं सेवा कर अधिनियम की धारा 107 के अंतर्गत पारित आदेश से असंतुष्ट हो तो वह इस आदेश के विरुद्ध अपील का आवेदन वस्तु और सेवा कर अधिनियम, 2017 की धारा 112 के अंतर्गत अपीलीय न्यायाधिकरण के समक्ष कर सकता है।**

   If any person is aggrieved by the order passed under section 107 of the Himachal Pradesh Goods and Services Tax Act, he can file an appeal against such order before the Appellate Tribunal under section 112 of the Goods and Services Tax Act, 2017.

Signed by
Ankush Kumar Sharma
Date: 08-04-2026 14:33:28

Asstt. State Taxes and Excise Officer
-cum-Reader to the Appellate Authority(GST)
Himachal Pradesh

ई-मेल के माध्यम से:

Endst. No.- EXN--(AA)001(01)/241/2025 Dated: **April, 2026**

Copy to:

1. The Commissioner, State Taxes **&** Excise, Himachal Pradesh.
2. The Commissioner, Central Goods **&** Services Tax Commissionerate Shimla in terms of section 107(15) of the HPGST Act, 2017.
3. Assistant Commissioner State Taxes and Excise, Sanjauli circle for information and necessary action.
4. Guard File.

Additional Commissioner Grade-I (Appeal)

अतिरिक्त आयुक्त ग्रेड-1 (अपील)

Department of State Taxes & Excise,

राज्य कर एवं आबकारी विभाग,

B-29, SDA complex, Kasumpti, Shimla-9

बी-29,एस डी ए परिसर,कुसुमप्टी, शिमला-9

Himachal Pradesh (हिमाचल प्रदेश)

ORDER IN APPEAL

(Under Section 107 of HPGST/CGST Act,2017)

1. General

Sr. No.	Appeal Details	Parties Details	Impugned Order Details
1	99/2024-25 Dated 29-11-2024	M/s Jai Ambey Bharat Gas ***Vs*** Assistant Commissioner State Taxes & Excise, Sanjauli Circle	ZD020824000829H Dated 03-08-2024
2	AD021224000059U Dated 02-12-2024	M/s Jai Ambey Bharat Gas ***Vs*** Assistant Commissioner State Taxes & Excise, Sanjauli Circle	ZD020824000840X Dated 03-08-2024

1.1. At the outset, it is made clear that the provisions of both the Central Goods and Service Tax Act and the Himachal Pradesh Goods and Service Tax Act are in *pari materia* and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Himachal Pradesh Goods and Service Tax Act, 2017.

1.2. M/s Jai Ambey Bharat Gas Address- 1st Floor , Uma Sadan , Near Sankatmochan , Taradevi Road , Badhawani , Shimla , Himachal Pradesh , 171011 GSTIN 02AZAPK7139F1ZQ (hereinafter referred to as the 'Appellant') has filed the present set of appeals in FORM APL-01 under section 107 of the CGST/HPGST Act, 2017 (hereinafter referred to as the 'Act') read with rule 108(1) of the CGST/HPGST Rules, 2017 (hereinafter referred to as the 'Rules') before this first Appellant Authority (hereinafter referred to as 'the Authority'. The present appeals have been filed against the Orders No. ZD020824000829H Dated 03-08-2024 and ZD020824000840X Dated 03-08-2024 (hereinafter referred to as the 'Impugned Orders') passed by the Assistant Commissioner State Taxes & Excise, Sanjauli Circle (hereinafter referred to as the 'Adjudicating Authority').

1.3. It is a well-recognized principle of adjudication that where multiple matters involve similar facts and common questions of law, it is not only prudent but also desirable to dispose of such matters through a common composite order. This approach promotes judicial consistency, avoids contradictory findings, and serves the interest of procedural economy.

1.4. The appeals listed from Sr. No. 1 to 2 are bunched together as: -

(a) The appeals have been filed against the impugned orders that are based on the same facts, arise out of an identical allegations pertaining to the levy of tax, interest and penalty on account of alleged bogus supplies.

2. Brief facts

2.1 That the appellant is a registered tax payer under the Act vide GSTIN-02AZAPK7139F1ZQ, and deals in supply of LPG for commercial purposes.

2.2 That the impugned order has been passed under Section 74 of the HPGST/CGST Act 2017 for the F. Y. 2023-24 on grounds of making fictitious sales with an intention to evade the tax.

2.3 That the premise of the Appellant was inspected by the Adjudicating Authority after obtaining necessary permission from the competent authority under Section 67 of the Act.

2.4 That the Appellant was served upon Show Cause notice dated 27-04-2024 pertaining to FY 2022-23 and 2023-24.

2.5 Subsequently, pursuant to said proceedings, the Adjudicating Authority passed the impugned orders for the FY 2022-23 and 2023-24 both dated 03-08-2024.

2.6 Aggrieved by the orders of the Adjudicating Authority, the Appellant filed the present appeals vide no. 99/2024-25 Dated 29-11-2024 (manually) and AD021224000059U Dated 02-12-2024(electronically).

3. Grounds of Appeal

3.1 The Appellant has provided below mentioned grounds of appeal along with the appeal application:-

3.1.1 That the impugned order passed under Section 74 of the Act, 2017 is bad in law and liable to be set aside, as the Adjudicating Authority has failed to comply with the mandatory procedure prescribed under Section 61 of the Act read with Rule 99 of the Rules, 2017. It is submitted that issuance of notice in FORM GST ASMT-10 is a statutory pre-condition in cases involving scrutiny of returns. In the present case, no such notice was issued prior to initiation of proceedings, thereby rendering the entire proceedings void ab initio and without jurisdiction.

3.1.2 That the Adjudicating Authority has further failed to comply with the provisions of Rule 142(1A) of the Rules, 2017, which mandates pre-show cause consultation through issuance of FORM GST DRC-01A. The Appellant was not provided with the details of the proposed demand nor given an opportunity to make submissions or voluntary payment. Such non-compliance has resulted in gross violation of principles of natural justice and vitiates the entire proceedings.

3.1.3 That the impugned orders have been passed in violation of the principles of natural justice, as the Appellant was deprived of a fair and meaningful opportunity to present his case. The failure to issue statutory communications such as ASMT-10 and DRC-01A has caused serious prejudice to the Appellant, rendering the orders arbitrary, unjust and unsustainable in law.

3.1.4 That the impugned orders are wholly unsustainable in law as these travel beyond the scope of the Show Cause Notices (SCN).

3.1.5 That the Adjudicating Authority has erred both in law and on facts by levying tax twice on the same transaction. It is submitted that the Appellant had already discharged IGST on the alleged interstate supplies. However, the Adjudicating Authority, while not disputing the existence of such supplies, has again demanded CGST and SGST by treating the same transactions as intra-state supplies. This has resulted in double

taxation, which is contrary to the scheme of GST law and violative of constitutional principles.

3.1.6 That the allegation of fictitious sales made by the Adjudicating Authority is wholly arbitrary, baseless and unsupported by any cogent evidence on record. The Adjudicating Authority has failed to establish that the transactions were non-genuine. On the contrary, the Adjudicating Authority has implicitly accepted that supplies were made and tax was discharged thereon. Thus, the findings recorded are self-contradictory and liable to be set aside.

4. <u>Personal Hearing</u>

4.1 The case was listed for hearing on dated 13-08-2025, 31-10-2025, 14-01-2026, 26-02-2026 and 27-03-2026.

4.2 The record of hearing held on dated 13-08-2025 is reproduced below: -

Record of PH held on Dated 13.08.2025 in the virtual mode.

Present Sh. Rakesh Sharma, Ld. Advocate for the appellant and Sh. Mohit Shukla, Assistant Commissioner State Taxes & Excise for the Adjudicating Authority/Respondent.

1.Following submissions are made for the Appellant:

1.1.That the impugned order has been passed under Section 74 of the HPGST/CGST Act 2017 on grounds of making fictitious sales with an intention to evade the tax.

1.2.That Ld. Advocate has further submitted a request that, since three appeal applications have been filed by the Appellant on

issues which are inter-related in subject matter and context, the same may be clubbed together and heard together.

2.The request of the Ld Counsel for the Appellant is acceded to. The appeals will be clubbed together.

3.Following Submissions are made for the Adjudicating Authority:

3.1.That the demand has been raised against the Appellant as per the provisions of the law. The Appellant had declared majority of its supplies to its sister concern located in the state of Punjab and intentionally, has issued invoices having taxable value less than ₹ 50,000 to evade the tax.

3.2.That the premises of the Appellant was inspected by the Adjudicating Authority after obtaining necessary permission from the competent authority under Section 67 of the HPGST/CGST Act 2017. Surprisingly, the inspection team found nothing at the declared placed of business of the Appellant.

3.3.Thereafter, upon inquiry, the Appellant informed the inspection team that the principal place of business had been shifted to Shoghi. This premises was found to be devoid of any infrastructure for storing goods. In such circumstances, the claim of the Appellant of carrying on business activities, particularly dealing with LPG cylinders (being explosive in nature), appears implausible and inconsistent with statutory requirements. The absence of adequate space for storage raises serious doubts as to how the Appellant was conducting operations in a lawful manner and indicates clear non-compliance with the conditions prescribed under the GST law with intention to evade tax.

3.4.That the Appellant has misled the inspection team by suppressing material facts regarding the actual principal place of business. Despite being obligated under the provisions of the GST law to maintain accurate and updated particulars of the place of business declared in the registration certificate, the Appellant failed to disclose the true and correct information. Such deliberate misrepresentation not only obstructed the verification process but also casts serious doubt on the bona fides of the Appellant.

3.5.That on the basis of the above findings, the Department has further contended that the sales transactions declared by the Appellant are fictitious, not genuine, and are designed with the sole objective of evading payment of tax.

4.The further hearing in the matter is ***adjourned.***

5. The date of next PH to be separately notified.

4.3 The record of hearing held on dated 31-10-2025 is reproduced below: -

Record of PH held on Dated 31-10-2025 in the virtual mode.

Present Sh. Rakesh Sharma, Ld. Advocate for the appellant. None is present for the Adjudicating Authority/Respondent.

1.Following submissions are made on behalf of the Appellant:

1.1.That the Appellant had filed a total of three appeals (two in the manual mode and one electronically) before this Authority.

1.2.That two appeals are against demand orders and the third one pertains to the order relating to the blocking of Input Tax Credit under Rule 86A of the CGST/HPGST Rules, 2017.

1.3.That due to a technical glitch, one of the appeal against demand order was filed manually on 07.10.2024 against the

original order No. ZD020824000829H dated 03.08.2024 for the Financial Year 2022-23, in compliance to the directions of the Hon'ble High Court of Himachal Pradesh vide order dated 03.10.2024.

1.4.That the original order dated 03.08.2024 was subsequently rectified on the same date by the Adjudicating Authority vide Rectified Order No. ZD020824000847J dated 03.08.2024.

1.5.That the Adjudicating Authority recovered an amount of 3,08,810/- on₹ 20.08.2025 against the demand raised vide the rectified order No. ZD020824000847J dated 03-08-2024, which is in excess of the statutory requirement of 10% of the disputed tax amount required as pre-deposit for filing the appeal and that the Appellant prays for treating the amount as the mandatory pre-deposit under Section 107(6) of the CGST/HPGST Act, 2017.

1.6.That the appeal made against the order no. ZD020824000829H dated 03-08-2024 may be considered against the rectified order no. ZD020824000847J dated 03.08.2024 being connected orders.

1.7. That all three appeals may kindly be heard together.

2.In view of the absence of representation from the Respondent's side, the matter is ***adjourned,*** *in the interest of justice.*

3. The date of next PH to be separately notified.

4.4 The record of hearing held on dated 14-01-2026 is reproduced below: -

Record of PH held on Dated 14.01.2026 in the virtual mode.

1.Sh. Rakesh Sharma, Ld. Advocate is present for the Appellant.

2.Sh. Mohit Shukla, Assistant Commissioner, State Taxes & Excise, is present for the Respondent/Adjudicating Authority.

3.Following Submissions are made for the Appellant:

3.1.That offline appeal may be heard alongwith this online appeal as both appeals arise from same facts.

3.2.That the impugned orders have been passed under Section 74 of the HPGST/CGST Act, 2017.

3.3.That the said order was passed on the grounds of making fictitious sales with an intention to evade tax.

3.4.That the appellant is a sole proprietor and a registered taxpayer engaged in the supply of LPG for commercial purposes across multiple States, including Himachal Pradesh, as an authorized distributor of Bharat Petroleum Corporation Ltd.

3.5.That the appellant has followed a well-recognized "sale on the wheels" business model wherein, LPG cylinders were dispatched daily for door-to-door supply to Himachal Pradesh, and the unsold cylinders were returned back to the supplier firm/sister firm along with requisite documents.

3.6.That the "sale on the wheels" business model is a recognized business practice in LPG distribution and is not prohibited under the Act or any other law.

3.7.That this has been a consistent and regular business practice of the appellant and he has properly recorded the supplies in his books as well in the periodic returns filed by him.

3.8.That there was no need for the appellant to store the cylinders, as it was not financially viable for him to maintain a godown in Himachal Pradesh; therefore, the business operated on a direct

dispatch from Punjab and return of the unsold stock back to Punjab.

3.9.That the goods supplied after making door to door supply using "sale on the wheels" business model, would be shown as intra state supplies in the books as well as returns while the left over/unsold stock taken back to Punjab in the same vehicle would be billed as interstate supplies to the sister concern/ supplier firm

3.10.That the appellant would carry the consignment into to the state of H.P and back to Punjab against proper invoices and e-way bills.

3.11.That the description of inter-state supplies rightly disclosed by the appellant as fictitious sale by the Adjudicating Authority carries no legal backing of the Act or the Rules.

3.12.That the Adjudicating Authority by bringing in an imaginary and illogical concept has effectively levied double taxation on goods which were shown as inter-state supplies in the returns.

3.13.That the supplies made back to the sister concern cannot be treated as fictitious sales when the Adjudicating Authority has himself accepted the intra state supplies and the entire input tax credit claimed and availed by the appellant.

3.14.That the appellant admits that the only violation on his part has been failure to keep the records at the declared place of business.

4.Following Submissions are made for Adjudicating Authority:

4.1.That the appellant has obtained registration by way of fraud and misrepresentation.

4.2.That the non-availability of records at the declared place of business also suggests that the appellant was not carrying out business operations genuinely from the said premises.

4.3.That there has been violation of Section 35 of the Act and Rule 56 of the Rules that requires maintenance of books and records at the principal place of business.

4.4.That during the inspection, it was found that there was zero stock available at the premises.

4.5.That non availability of stock at the registered business premises of the appellant indicates that the claimed supplies are fictitious.

4.6.That the Appellant has changed the principal place of business without submitting amendment application on the GST portal.

4.7.That the Act requires that any change in place of business be duly declared and amended in the registration records, which has not been done in the present case.

4.8.That the impugned orders have been passed strictly in accordance with the provisions of the GST Law.

4.9.That the impugned orders deserve to be upheld.

4.10.That the Adjudicating Authority may be allowed liberty to make additional submissions in response to the submissions made for the Appellant.

5.The requests made for the Appellant and the Adjudicating Authority are acceded to.

6.The case is ***adjourned.***

7.The next date of hearing shall be notified separately.

4.5 The record of hearing held on dated 26-02-2026 is reproduced below: -

Record of PH held on Dated 26.02.2026 in the virtual mode.

1.Sh. Rakesh Sharma, Ld. Advocate is present for the Appellant.

2.Sh. Mohit Shukla, Assistant Commissioner, State Taxes & Excise, is present for the Respondent/Adjudicating Authority.

3.Following Submissions are made for the Appellant:

3.1.That the appellant submitted that the impugned order is wholly unsustainable in law as it travels beyond the scope of the Show Cause Notice (SCN).

3.2.That the adjudicating authority has relied upon certain discrepancies, allegations and findings which were never alleged or proposed in the SCN. It is a settled principle of law that an order must confine itself strictly to the allegations contained in the SCN and no new grounds can be introduced at the stage of adjudication.

4.Following Submissions are made for the Adjudicating Authority:

4.1.That the field visit conducted by the proper officer categorically revealed that no business activity was being carried out at the registered premises, and no evidence of operational existence could be substantiated.

4.2.That on the basis of the material available on record and findings of the field inquiry, a Show Cause Notice (SCN) was duly issued to the Appellant, clearly setting out the allegations, proposed demand, and the legal provisions invoked. The SCN provided adequate details and afforded the Appellant sufficient opportunity to submit a reply and produce supporting documents.

5.The Authority directed the Appellant to furnish details of the recipients of the firm during the relevant period.

6.The next date of hearing shall be notified separately."

4.6 The case was heard finally **on dated 27-03-2026** through video conferencing. **Sh. Rakesh Sharma, Ld. Advocate** Authorized representative of the firm attended the hearing for the Appellant and **Smt. Sanjana Sharma,** Assistant State Taxes & Excise Officer for the Adjudicating Authority.

4.7 The Ld. Advocate for the Appellant submitted that the impugned orders are liable to be set aside on the independent ground that these travel beyond the scope of the Show Cause Notices. The Adjudicating Authority has confirmed the demand on grounds and reasoning not alleged in the SCN, which is impermissible in law. It is a settled legal position that the SCN forms the foundation of adjudication and any order passed beyond its scope is unsustainable.

4.8 The representative of the Adjudicating Authority submitted that there are no further submissions to place on record and that the arguments on behalf of the Adjudicating Authority stand concluded.

5. <u>Discussions and Findings by the Authority.</u>

5.1 I have examined in detail, the impugned orders, grounds of appeal, submissions for the Appellant and the Adjudicating Authority.

5.2 I find that the present appeals have been preferred against the orders passed under section 74 of the Act wherein it has been alleged that the Appellant had effected fictitious sales to its sister concerns located in the States of Punjab and Haryana.

5.3 I find merit in the contention of the Appellant that Show Cause Notice (hereinafter referred to as "SCN") is vague and the impugned order travels beyond the scope of the SCN and that the Adjudicating Authority has confirmed the demand on grounds and reasoning not specifically alleged in the SCN.

5.4 I find that the primary finding disclosed in the SCN is (a) not operating from the business premises disclosed on the portal, (b) non-updation of the new place of business on the portal, and (c) not maintaining stock and the books of accounts in the new place.

5.5 I find that the conclusion made in the SCN, based upon the finding as per para 5.4 "It is proved that the Appellant is operating without any business premises and also availed ITC fraudulently" is illogical and far-fetched.

5.6 I further find that no reason for the conclusion made in the SCN that "the Appellant has fraudulently made sales to his own firms located in

Chandigarh, Haryana and Punjab and has availed ITC thereon" has been disclosed.

5.7 I find that The SCN is defective and legally unsustainable as it fails to provide essential particulars. In the absence of proper disclosure of the basis on which conclusions with regards to evasion of tax / fraud committed has been arrived in the SCN, the Appellant is deprived of a fair and reasonable opportunity to rebut, thereby rendering the SCN vague and violate of the principles of natural justice.

5.8 I also find that the impugned orders travel beyond the scope of the SCN and therefore are unsustainable in law.

5.9 I place reliance on the judgements cited in the subsequent paras.

5.10 In the matter of *CCE v. Shital International reported in (2011) 1 SCC 109*, the Hon'ble Supreme Court has observed/held as follows:

> *"19. As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show- cause notice, the revenue cannot be permitted to build up a new case against the assessee. (See: Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd, Commissioner of Central Excise, Nagpur Vs. Ballarpur Industries Ltd and Commissioner of Central Excise, Bhubaneshwar-I Vs. Champdany Industries Limited). Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show cause notice dated 22nd June 2001 relating to the assessment year 1988-89*

to 2000-01. However, in the show cause notice dated 12th December 2000, the process of electrifying polish finds a brief mention. Therefore, in light of the settled legal position, the plea of the learned counsel for the Revenue in that behalf cannot be entertained as the revenue cannot be allowed to raise a fresh plea, which has not been raised in the Show Cause notice nor can it be allowed to take contradictory stands in relation to the same assessee."

5.11 In *M/s Techno Prints v. Chhattisgarh Textbook Corporation and Ors.*, reported in MANU/SC/0230/2025, the Hon'ble Apex Court has observed/held as follows:

"32. We may put it in a slightly different way. Take for instance, the show cause notice in the present case is the final order of blacklisting. The final order in any case cannot travel beyond the show cause notice. Therefore, we take the show cause notice as the final order. Whether it makes out a case for blacklisting? This should be the test to determine whether it is a genuine case to blacklist a contractor or visit him with any other penalty like forfeiture of EMD, recovery of damages etc. We say so because once an order of blacklisting is passed the same would put an end to the business of the person concerned. It is a drastic step. Once the final order blacklisting the Contractor is passed then the Contractor is left with no other option but to go to the High Court invoking writ jurisdiction Under Article 226 of the Constitution and challenge the same. If he succeeds before the Single Judge then it is well and good otherwise he may have to prefer a writ appeal or LPA as the case may be. This again

would lead to unnecessary litigation in the High Courts. The endeavour should be to curtail the litigation and not to overburden the High Courts with litigations of the present type more particularly when the law by and large is very well settled and there is no further scope of any debate."

5.12 In the matter of Kothari Sugars and Chemicals Ltd., (W.A. (MD).Nos.557 to 568 of 2024) Hon'ble Madras High Court has observed as under;

30. It is a settled legal proposition that, the Revenue cannot improve their case beyond what has been shown in their show cause notices. Umpteen number of decisions have been rendered that, the Revenue must confine with the content of the show cause notice, as the show cause notice is the basis, based on which only adjudication process has to go on and to be decided.

5.13 The Hon'ble Supreme Court in the case of CCE Vs. H.M.M. Limited, reported in 1995 (76) E.L.T. 497 (S.C.) has observed/held as follows:-

"2.The assessee contended before the Additional Collector of Central Excise that the show cause notice was time barred under the main part of Section 11A since it was issued after the expiry of the period of six months stipulated therein but the Additional Collector sustained the notice on the ground that it was within five years impliedly holding that the purported action was under the proviso to Section 11A of the Act. There is no dispute that the show cause notice cannot be

sustained under sub-section (1) of Section 11A unless the proviso is attracted. Admittedly, it is beyond the period of limitation of six months prescribed under Section 11A (1) but it is within the extended period of 5 years under the proviso to that sub-section. Now in order to attract the proviso it must be shown that the excise duty escaped payment by reason of fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision of the Act or of the Rules made thereunder with intent to evade payment of duty. In that case the period of six months would stand extended to 5 years are provided by the said proviso. Therefore, in order to attract the proviso to Section 11A (1) it must be alleged in the show cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or wilful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been noticed or that the assessee was a guilty or wilful misstatement or suppression of fact. In the absence of such averments in the show cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11A(1) of the Act. The Additional Collector while conceding that the notice had been issued after the period of six months prescribed in Section

11A(1) of the Act had proceeded to observe that there was wilful action of withholding of vital information apparently for evasion of excise duty due on this waste/by-product but counsel for the assessee contended that in the absence of any such allegation in the show cause notice the assessee was not put to notice regarding the specific allegation under the proviso to that sub-section. The mere non-declaration of the waste/by-product in their classification list cannot establish any wilful withholding of vital information for the purpose of evasion of excise duty due on the said product. There could be, counsel contended, bona fide belief on the part of the assessee that the said waste or by-product did not attract excise duty and hence it may not have been included in their classification list. But that per se cannot go to prove that there was the intention to evade payment of duty or that the assessee was guilty of fraud, collusion, misconduct or suppression to attract the proviso to Section 11A(1) of the Act. There is considerable force in this contention. ***If the Department proposes to invoke the proviso to Section 11A(1), the show cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The de- faults enumerated in the proviso to the said sub-section are more than one and if the excise department places reliance on the proviso it must be specifically stated in the show cause notice which is the***

allegation against the assessee falling within the four comers of the said proviso. *In the instant case that having not been specifically stated the Additional Collector was not justified in inferring (merely because the assessee had failed to make a declaration in regard to waste or by- product) an intention to evade the payment of duty. The Additional Collector did not specifically deal with this contention of the assessee but merely drew the inference that since the classification list did not make any mention in regard to this waste product it could be inferred that the assessee had apparently tried to evade the payment of excise duty."*

5.14 In the case of ***Metal Forgings & Anr vs Union Of India & Ors (Appeal (civil) 2029-31 of 1995***, *the Hon'ble SC observed/held that;*

"It is an admitted fact that a show cause notice as required in law has not been issued by the revenue. The first contention of the revenue in this regard is that since the necessary information required to be given in the show cause notice was made available to the appellants in the form of various letters and orders, issuance of such demand notice in a specified manner is not required in law. We do think that we cannot accede to this argument of the learned counsel for the revenue. Herein we may also notice that the learned Technical Member of the tribunal has rightly come to the conclusion that the various documents and orders which were sought to be treated as show cause notices by the appellate authority are inadequate to be treated as show cause notices contemplated under Rule 10 of the Rules

or Section 11A of the Act. Even the Judicial Member in his order has taken almost a similar view by holding that letters either in the form of suggestion or advice or deemed notice issued prior to the finalisation of the classification cannot be taken note of as show cause notices for the recovery of demand, and we are in agreement with the said findings of the two Members of the tribunal. This is because of the fact that issuance of a show cause notice in a particular format is a mandatory requirement of law. ***The law requires the said notice to be issued under a specific provision of law and not as a correspondence or part of an order. The said notice must also indicate the amount demanded and call upon the assessee to show cause if he has any objection for such demand.*** *The said notice also will have to be served on the assessee within the said period which is either 6 months or 5 years as the facts demand. Therefore, it will be futile to contend that each and every communication or order could be construed as a show cause notice. For this reason the above argument of the revenue must fail."*

5.15 In the case of ***Oryx Fisheries Pvt.Ltd vs Union Of India & Ors (Appeal (civil) ,2010****, Hon'ble SC observed/held that;*

"28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If

that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony."

29. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself. Such a close mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred under Section 33 of The Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.

30. Rule 43 of the MPEDA Rules provides as follows:

"43. Cancellation of registration Where the Secretary or other officer is satisfied that any person has obtained a certificate of registration by furnishing incorrect information or that he has contravened any of the provisions of this rule or of the conditions mentioned in the certificate of registration, or any person who has been registered as an exporter fails during the period of twelve consecutive months to export any of the marine products in respect of which he is

registered, or if the secretary or other officer is satisfied that such person has become disqualified to continue as an exporter, the Secretary or such officer may, after giving the person who holds a certificate a reasonable opportunity of making his objections, by order, cancel the registration and communicate to him a copy of such order."

31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi- judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

5.16 The Hon'ble High Court of Gujarat in the case of ***Aggarwal Dyeing And Printing Works vs State Of Gujarat has*** *observed/* held as under;

"11. At the outset, we notice that it is settled legal position of law that reasons are heart and soul of the order and non-communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in

miscarriage of justice. This Court is bound by the said judgments hereinafter referred to.

The necessity of giving reason by a body or authority in support of its decision came for consideration before the Supreme Court in several cases. Initially, the Supreme Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the Supreme Court in A.K. Kraipak v. Union of India, (1970) 1 SCR 45. The Hon'ble Supreme Court vide judgments in the cases of Ravi Yashwant Bhoir v. District Collector Raigad, (2012) 4 SCC 407, Sant Lal Gupta v. Modern Cooperative Group Housing Society Limited, (2010) 13 SCC 336; Kranti Associates Private Limited v. Masood Ahmed Khan, (2010) 9 SCC 496; Abdul Ghaffar v. State of Bihar, (2008) 3 SCC 258, has expanded the horizon of natural justice and reasons have been

treated part of the natural justice. It has gone to the extent in holding that reasons are heart and soul of the order. The absence of reasons renders an order indefensible/unsustainable particularly when it is subject to appeal/revision. It is to be noted that in the case of Kranti Associates v. Masood Ahmed Khan, (2010) 9 SCC 496, the Hon'ble Supreme Court after considering various judgments formulated certain principles which are set out below:

*"**a**. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

***b**. A quasi-judicial authority must record reasons in support of its conclusions.*

***c**. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

***d**. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

***e**. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*

***f.** Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

***g**. Reasons facilitate the process of judicial review by superior Courts.*

h. *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*

i*. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

j. *Insistence on reason is a requirement for both judicial accountability and transparency.*

k. *If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

l. *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubberstamp reasons' is not to be equated with a valid decision making process.*

m*. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737);.*

n*. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said*

requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553 at 562 para 29 and Anya University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decision."

***o**. In all common law jurisdictions judgments play a vital role in setting up precedents for the future .Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".*

Thus, the position of law that emerges from the decisions mentioned above, is that assignment of reasons is imperative in nature and the speaking order doctrine mandates assigning the reason which is the heart and soul of the decision and said reasons must be the result of independent re-appreciation of evidence adduced and documents produced in the case.

***12**. At this stage it would be germane to refer to observations made by the Andha Pradesh High Court in the case of **MRF Mazdoor Sangh vs. The Commissioner of Labour & Others**, reported in 2014 (3) ALT 265, MANU/AP/1685/2013, wherein the matter of cancellation of registration of trade union, it was held that :*

"The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the

authority does not have jurisdiction to decide the other issues."

5.17 The Hon'ble High Court of Delhi in the case of *M/s Ganesh Sales Corporation Versus Union Of India & Ors has* observed/held as under;

"7. We notice that the Show Cause Notice and the impugned order are bereft of any details accordingly the same cannot be sustained. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation."

5.18 I find that the SCN forms the foundation of adjudication, and any order passed based on a defective and vague SCN, and any order traveling beyond the scope of the SCN is unsustainable in law and is liable to be quashed.

5.19 I find that the impugned orders deserve to be set aside in view of the discussions made in para supra

6. ORDER

6.1 The appeal is **allowed**, and the impugned orders are **set aside** in accordance with the discussions and finding made in para 5.

6.2 The order in para 6.1 pronounced on **27th Day of March 2026.**

Signed by
Rakesh Sharma
Date: 08-04-2026 14:24:18

(राकेश शर्मा)

अतिरिक्त आयुक्त, ग्रेड -1 (अपील)