

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 4675 of 2017**

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MESSRS PRELUDE LAMINATES PVT. LTD.

Versus

UNION OF INDIA

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Appearance:

MR PARESH M DAVE(260) for the PETITIONER No. 1,2

MR DEVANG VYAS ASG for Respondent No.1

JAIMIN A GANDHI(8065) for the RESPONDENT No.2

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CORAM: **HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

and

**HONOURABLE MR.JUSTICE A.G.URAIZEE****Date : 31/08/2017****ORAL ORDER****(PER : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT)**

1. Heard learned counsel for the parties.
2. Looking to the controversy, being in very narrow compass, the matter was taken up for final disposal. Hence, let there a formal Rule be issued, service whereof is waived by the learned counsel Mr. Lodha for the respondent No.1 and Mr. Jaimin A. Gandhi for respondent No.2. At the request of learned counsels for the parties rule is fixed forthwith.
3. The petitioners have approached this Court by way of this petition under Article 226 of the Constitution of India with the following prayers:-

*“(A) That Your Lordships may be pleased to issue Writ of Certiorari or any other appropriate Writ, Order or Direction quashing and setting aside O/O*

*No.KDL/137/PS/AC/Gr.VII/2012-13 dated 7.2.2013. (Annexure-"H") passed by the Deputy Commissioner of Customs, Custom House, Kandla, with all consequential reliefs and benefits to the Petitioner Company;*

*(B) That Your Lordships may be pleased to issue a Writ of Prohibition or any other appropriate writ, direction or order, completely and permanently prohibiting the Respondents, their servants and agents from recovering any amount from the Petitioner Company pursuant to O/O No.KDL/137/PS/AC/Gr.VII/2012-13 dated 7.2.2013 (Annexure-"H") passed by the Deputy Commissioner of Customs, Customs House, Kandla;*

*(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to restrain the respondents, their servants and agents from taking any action of coercive recovery from the Petitioner Company pursuant to O/O No. KDL/137/PS/AC/Gr.VII/2012-13 dated 7.2.2013 thereby staying implementation and execution of this adjudication order dated 7.2.2013;*

*(D) An ex-parte ad-interim relief in terms of Para 20(C) above may kindly be granted;*

*(E) Any other further relief as may be deemed fit in the facts and circumstances of the case may also please be granted."*

Thus, what is essential under challenge is the order dated 7<sup>th</sup> February, 2013 passed by the Deputy Commissioner of Customs, Kandla calling upon the petitioners to pay a sum of Rs.42,04,184/- of duty free imports in respect of advance authorization under the provisions of Section 28(2) read with Section 143 of the Customs Act, 1952 along with interest at the applicable rate from the date of clearance till the date of payment in terms of bond clearance by them on the ground

that the said order could not have been passed, as the basis for passing the said order being not initiated when the order came to be passed and hence the said order deserves to be quashed and set aside.

4. The facts, in brief, as could be gathered from the memo and annexures deserves to be set out as under:-

4.1 The Petitioner has been registered and incorporated as a Private Limited Company under the provisions of the Companies Act, 1956. The Petitioner Company has established a factory at Vadodara-Halol Road, District Panchmahal for manufacturing goods like Industrial and Decorative Laminates. The commercial production of the above goods commenced in the petitioner's factory around year 2001-2002. About 95% of industrial laminates manufactured by the Petitioner Company were exported to foreign countries, and a very small portion of the above goods manufactured was sold in the domestic market in India. However, manufacturing activities and other business affairs of the Petitioner Company stand discontinued from around year 2008.

4.2 The Petitioner Company has complied with the provisions of the Customs Act, 1962 and Rules as well as Regulations framed thereunder for import and export of goods; and the provisions of the Central Excise Act, 1944 and the Rules framed thereunder have also been fully complied with by the Petitioner Company in respect of the manufacturing activities.

4.3 The Petitioner Company had applied for, and was given, several Advance Licences by the office of the Jt. Director General of Foreign Trade, Ahmedabad, thereby allowing the Petitioner Company to import raw materials like Phenol and Kraft paper for being used in relation to manufacture of the final products. The Advance Licenses issued in their favour, and export obligations have also been fully discharged by the Petitioner Company for all Advance Licenses.

4.4 In the normal course of business, once Advance License dated 20.06.2005 was issued in favour of the Petitioner Company by the office of the Joint DGFT, Ahmedabad. The export obligation under this Advance License was 227,500 Mts. in terms of quantity, whereas in terms of value it was \$2,78,920/-. The Petitioner Company exported the specified final products under 10 separate Shipping Bills, which were issued during June, 2005 to January, 2006, and 226.69 Mts of the final products valued at \$2.79,186/- were exported for discharging the export obligations in respect of the Advance Licence dated 20.06.2005.

In accordance with the practice and procedure followed by the office of the Jt. DGFT, the Petitioner Company submitted all the documents including the proof of export and above referred shipping bills before the Jt. DGFT, Ahmedabad; but upon finding that there was a shortfall in terms of quantity exported to the extent of 0.81 Mts, a Demand Notice No.51/AM07 dated 29.03.2007 was issued by the Foreign Trade Development Officer, Ahmedabad, thereby directing the Petitioner Company to follow the procedure as per para

4.28(i)(a)(b) of Hand Book of Procedure for regularizing the above shortfall. Accordingly, an amount of Rs.6,785/- was worked out as custom duties with interest leviable on the quantity of imported raw materials in terms of the shortfall in exported quantities of the final products. The petitioner Company, under a challan dated 5.11.2007, deposited Rs.6,785/- as duty and interest, at Kandla Customs, and thereupon the obligations arising out of the above Advance Licence dated 20.06.2005 stood completely fulfilled. Thereupon, in accordance with the provisions of the Foreign Trade Policy, the office of the Jt. DGFT, Ahmedabad has issued EODC/Bond waiver letter thereby certifying fulfillment of export obligations in respect of Advance Licence dated 20.06.2005.

4.5. In the same year i.e. F.Y. 2008, the manufacturing activities and other business affairs of the Petitioner Company had to be closed down because of various difficulties and problems. The factory located at the above address has not been used from year 2008, and the activities at the said factory ceased completely.

4.6 The materials under the Advance Licence No.0810048707 dated 20.06.2005 were imported through Kandla Port, and therefore the copy of EODC/Bond Waiver letter dated 11.06.2008 was sent by the Jt. DGFT, Ahmedabad, to the Commissioner of Customs, Kandla also. Even a copy of Demand Notice No.51/AM07 dated 29.03.2007 was also forwarded by the office of the Jt. DGFT to the office of the Commissioner of Customs, Bombay/Kandla. The Petitioner Company has deposited the above sum of Rs.6,785/-

with reference to the Advance Licence dated 20.06.2005 at Custom House, Kandla. Therefore, the officers of the Kandla Customs including the office of the 2<sup>nd</sup> respondent herein were obviously aware that the Petitioner Company had fulfilled export obligations in respect of the above referred Advance Licence dated 20.06.2005, and that the Export Obligation Discharge Certificate (EODC)/Bond Waiver had also been issued by the Licensing authority. However, a letter dated 18.12.2007 came to be issued by the Assistant Commissioner of Customs, Kandla, asking the Petitioner Company to submit EODC as proof of fulfillment of export obligation with reference to licence dated 20.06.2005, failing which duties were proposed to be recovered by enforcing the Bond.

The Petitioner Company therefore replied vide letter dated 28.01.2008 and clarified to the said Assistant Commissioner of Customs that Jt. DGFT, Ahmedabad had issued a Demand Notice dated 29.03.2007 when the Petitioners applied for redemption certificate, and the Petitioner Company having paid the required amount on 5.11.2007, the export obligation had been completed.

4.7 However, a Notice under Section 124 of the Customs Act came to be issued by the 2<sup>nd</sup> Respondent herein thereby referring to two Licences, one of them being Licence No.0810048707 dated 20.06.2005, thereby calling upon the Petitioner Company to show cause why appropriate duties should not be charged on the goods procured duty free with interest.

The Petitioner Company, upon receiving the above notice through registered post, replied vide letter dated 8.04.2008 and explained to the Assistant Commissioner of Customs that goods were exported under 10 shipping bills for fulfilling export obligation in respect of licence dated 20.06.2005, and Export Promotion copies (EP Copies) of the shipping bills were also submitted with the said letter. The Petitioner Company also referred to the demand notice of the Jt. DGFT and the payment made by the Petitioner Company for shortfall in quantity of exported goods. Due explanation for the other licence dated 15.09.2004 was also submitted under reply dated 8.04.2008 which was filed through registered post. Thereafter, the Petitioners have not received any further communication or any notice or any letter from the Customs Department in respect of any of the two Licences. After the Petitioner Company filed the above referred reply dated 8.04.2008 with the details of fulfillment of export obligations, no further communication was received by the Petitioners. The Petitioners were under impression that the issue about the above licence was over.

4.8 A letter dated 28.10.2015 was received by one of the directors Shri Hiren Shamaldas Mehta at Mumbai, wherein the 2<sup>nd</sup> Respondent referred to an adjudication order and requested the said director to pay government dues. Shri Mehta, therefore, sent a letter dated 07.11.2015 to the 2<sup>nd</sup> Respondent, and stated that no such order was received with the letter dated 28.10.2015 and that he was not aware about any order passed against the company. In response to this letter, a copy of one adjudication order dated 7.2.2013 came to be served upon a Director of the Petitioner Company at

Bombay under a covering letter dated 18.01.2016 by the 2<sup>nd</sup> respondent herein.

Upon reading the accompanying adjudication order dated 7.02.2013, the petitioners learnt that custom duties aggregating to Rs.42,04,184/- were confirmed under Section 28(2) read with Section 143 of the Customs Act with interest under Section 28AB of the said Act for Advance Authorization NO.810048707 dated 3.3.2005; and the basis for such determination and confirmation of duty and interest was that the petitioner Company had not produced evidence of exports as required under the Customs Notification allowing duty free import. A reference to a show cause notice dated 21.08.2012 is also made in the above referred adjudication order though the petitioner Company, has never received any such show cause notice or any further notice for personal hearing. The Petitioner's Director has received the above referred order under a covering letter dated 18.01.2016 issued by the 2<sup>nd</sup> Respondent herein.

4.9 The basis of the above referred order was incorrect because the Petitioner Company has undisputedly fulfilled export obligations in respect of the Advance Licence/Authorization in question, and therefore the petitioner Company submitted a representation dated 11.03.2016 to the 2<sup>nd</sup> respondent herein and explained in details as to how there was a clear error on part of the Customs Department in demanding custom duties foregone qua the materials imported under Advance Licence dated 20.06.2005. The petitioner Company also submitted with this representation, copies of the demand notice issued by the Jt.



DGFT, Challan for payment of duty and interest for the shortfall in export in terms of quantity, the notice issued by the Customs Department on 7.03.2008 and the Petitioner's reply dated 8.04.2008. The Petitioner Company requested the 2<sup>nd</sup> Respondent herein to treat the matter as closed and also for not enforcing the adjudication order dated 7.2.2013 which was never served upon the Petitioner Company in past. The petitioners also submitted in this representation that no show cause notice or any notice for personal hearing were also received by them in this case.

4.10 However, the 2<sup>nd</sup> respondent has issued a letter dated 4.01.2017 informing the Petitioner Company that an appeal was required to be filed before the Commissioner (Appeals) against the order dated 7.2.2013, and the legal provisions did not allow the same authority to drop or withdraw a confirmed demand. The 2<sup>nd</sup> respondent also advised the petitioner Company to file an appeal before the appropriate authority vide letter dated 4.1.2017.

5. The counsel for the petitioners submitted that the Order in Original and the communication for recovery is on assumption and presumption that the required export obligation discharged certificate was not issued by the Director General of Foreign Trade (DGFT) but this assumption and presumption is incorrect as the certificate was issued by the DGFT on 11.8.2008 and hence the same was required to be taken into consideration which would have required the authority to appreciate that the export obligation was fully discharged.

6. The learned counsel appearing for the petitioners submitted that the first show cause notice in respect for the period of import being 2005-2006 came to be issued on 7.3.2008. The petitioner filed its reply clearly indicating therein that the export obligation was fulfilled. The said representation was dated 8.4.2008. After that submission of representation, nothing was heard from the authority which indicated that the authority had accepted the say of the petitioners and after verification of the record, discharged the show cause notice. The so called second show cause notice dated 21.8.2012 had never been occasioned and the same was not served upon the petitioners.

7. The counsel for the petitioners submitted that the communication received by the Director on 28.10.2015 was surprised to all as there was no knowledge of Order in Original dated 7.2.2013 as the same had never been served. The petitioners' submission was to the effect that thereafter the correspondence ended with authorities inability to drop of the proceedings on account of their confirming the demand and hence communication was sent on 4.1.2017. The appeal would lye to the Commission of Appeal for which the period had lapsed long back and therefore, the petitioners were left with no other alternative remedy but to approach this Court under Articles 226 and 227 of the Constitution of India with the reliefs prayed in the petition.

8. The learned counsel appearing for the petitioners invited Court's attention to the interim order passed by this Court and he led heavy emphasis upon the interim order and therefore, the entire interim order deserves to be set out as

under : 3.3.2017:

*"1. Mr. Paresh Dave, learned advocate for the petitioners has invited the attention of the court to the demand notice dated 29.3.2007 (Annexure-A to the petition) to point out that in terms thereof, there is a small shortfall in the actual exports made. It was pointed out that the differential duty was accordingly paid, which is evidenced by the challan dated 5.11.2007 (page 20 to the petition). It was submitted that in relation to the licence in question, namely, Advance Authorization Licence No.0810048707 dated 20.6.2005, the authority had given a EODC/Bond Waiver letter certifying that the export obligation was met in full before importation. It was submitted that despite the aforesaid position, a show cause notice dated 7.3.2008 came to be issued to the petitioners under section 124 of the Customs Act, 1962 in relation to the licence in question, inter alia, calling upon the petitioners to show cause why the conditions of the bond executed by them should not be enforced for failure to comply with the conditions of the exemption notification claimed. It was submitted that pursuant to the said notice, the petitioner had filed its reply, however, thereafter, no further action was taken on the said notice. It was submitted that subsequently, one of the Directors of the petitioner company received a letter dated 28.10.2015 requesting him to pay the Government dues whereupon, upon inquiry, it was found that the impugned order dated 7.2.2013 had been passed by the authority in relation to a show cause notice dated 21.8.2012. The attention of the court was invited to the contents of the earlier notice and to the*

*impugned order to point out that the show cause notices in both the cases are issued on identical grounds in respect of the same licence. It was pointed out that subsequent thereto, the petitioners had made a representation to the authority bringing to its notice the fact that the export obligation had been completed within the time-limit as prescribed in the licence and EODC/Bond Waiver letter had been issued on 11.6.2008. It was submitted that it was only on 4.1.2017 that the authority informed the petitioners that it could not drop or withdraw a confirmed demand and hence, the petitioners should file an appeal before the appropriate authority. It was submitted that, in the meanwhile, the prescribed time-limit for preferring an appeal under section 128 of the Customs Act, 1962 had lapsed. The attention of the court was invited to the decision of a Division Bench of this court in the case of **Navin Fluorine International Limited v. Union of India**, rendered on 6.3.2013 in Special Civil Application No. 1974 of 2013 to submit that in a more or less similar case, this court has interfered and granted relief to the petitioner therein. Reference was also made to the decision of a Larger Bench of this court in **Panoli Intermediate (India) Private Limited v. Union of India**, 2015 (326) E.L.T. 532 (Guj.), wherein the court has laid down the circumstances in which a petition under Article 226 of the Constitution can be preferred challenging the order passed by the adjudicating authority, to submit that the present case would fall within the categories enumerated therein.*

*2. Having regard to the submissions advanced by the learned advocate for the petitioners, **Issue Notice** returnable*

*on 21<sup>st</sup> March, 2017. In the meanwhile, the respondents are restrained from making any coercive recovery pursuant to the impugned order dated 7.2.2013 passed by the Deputy Commissioner of Customs, Customs House, Kandla.*

*Direct service is permitted qua respondent No.2."*

9. The learned counsel appearing for the petitioners laid heavy reliance upon the decision of this Court in case of **Navin Flourine International Limited Vs. Union of India**, rendered on 6.3.2013 in Special Civil Application No. 1974 of 2013 to submit that in a similar situation this Court did grant relief to the petitioners.

10. Learned counsel appearing for the petitioners relied upon the observation of this Court in case of **Panoli Intermediate (India) Pvt. Ltd. Vs. Union of India**, reported in 2015 (326) ELT 532 (Guj.), and submitted that the circumstances mentioned in the judgment which are similar to the present case would justify filing of the present petition.

11. Learned counsel appearing for the respondent invited Court's attention to affidavit-in-reply and laid emphasis upon the fact that the petitioners had not resorted the alternative efficacious remedy of appeal.

12. The counsel for the respondent further submitted that the petitioners did have knowledge of the Order in Original dated 7.2.2013 at least from the year 2016 and therefore from the receipt thereof, the period of limitation starts and the

appeal could have been preferred. The petitioners have chosen not to file any appeal and approached this Court directly under Article 226 of the Constitution of India and hence the petition may not be entertained and deserves to be dismissed.

13. The counsel for the respondent relied upon the decision in case of **Vikram Knittex (P) Ltd. Vs. Union of India** rendered in Special Civil Application No. 10330 of 2013 decided on 6.2.2014, reported in [2014] 43 Taxmann.com 404 (Guj.) and submitted that the said decision would indicate that the lame excuses for approaching the Court would amount to permitting the petitioners to bye-pass the remedy available to it and it would amount to introduce the just and proper cause for condoning delay, which the legislature has not provided in the provision of appeal while prescribing the time limit for preferring the appeal.

14. This Court has heard learned counsels for the parties and perused the memo of petition and annexures. Before advertng to the rival contentions of the parties, it would be most advantageous to set out few indisputable aspects emerging therefrom namely –

(a) **2001-2002** : The petitioner company established manufacturing unit at Vadodara-Halol Road, Dist.: Panchamahar for manufacturing industrial and decorative laminates. As per the say of the petitioners 95% of the production was being exported.

(b) **20.6.2005**: One Advance Licence No 810048707 came to be issued by the Joint DGFT, Ahmedabad with export

obligations in quantity of 227.500 MTs. of final products having export obligation in terms of value of US\$ 2.78,920/-

- (c) **From June 2005 to January, 2006** : As per the say of the petitioner company under 10 Shipping Bills, exported final products against the aforesaid advance licence which in terms of quantity was 226.69 MTs. and in terms of value US\$ 2,79,186/-.
- (d) The petitioner company submitted all the documents to the Joint GDFT for discharging of the Bond submitted for the above referred advance licence dated 20.6.2005.
- (e) **29.3.2007**: A Demand Notice No. 51/AM07 came to be issued by Joint DGFT, Ahmedabad indicating shortfall of 0.81 MTs in terms of quantity against the advance license and asked the company to follow the procedure under the hand book for regularizing the shortfall. Copy of this Demand Notice was also served upon the Kandla Customs whereby import had taken place.
- (f) **5.11.2007** : the petitioner company deposited Rs.6,785/- with Kandla Customs under a challan and duty towards above shortfall of 0.81 MTs of final products.
- (g) **18.12.2007**: the Assistant Commissioner of Customs, Kandla sent a letter to the petitioner Company for submitting EODC (Export Obligation Discharge Certificate) as proof of above license dated 20.6.2005.
- (h) **28.1.2008**: The petitioner replied to the Asst. Commissioner of Customs that the Joint DGFT, Ahmedabad has issued a Demand Notice and the appellant had deposited the amount of duty with interest and hence the export obligation stood fulfilled.

- (i) **7.3.2008:** Show Cause Notice came to be issued by the Asst / Dy. Commissioner of Customs, Kandla under Section 124 of the Customs Act calling upon the Company as to why duties should not be charged for the goods imported under two Advance Licences, one of them being the Advance Licence No. 810048707 dated 20.6.2005.
- (j) **11.6.2008:** The office of the Joint DGFT, Ahmedabad issued Export Obligation Discharge Certificate / Bond Waiver letter certifying fulfillment of export obligations in respect of the above Advance Licence No. 810048707 dated 20.6.2005. The copy whereof is placed on the memo of petition.
- (k) **8.4.2008:** The petitioner Company sent detailed reply to the Show Cause Notice indicating that the exports were made under 10 shipping bills against the Advance Licence dated 20.6.2005 and there existed no obligation outstanding.
- (l) The petitioner submitted that at the end of 2008 the manufacturing activities and business affairs of the petitioner company were discontinued on account of various difficulties.
- (m) As nothing was heard after the reply of the petitioner dated 8.4.2008, the petitioners were under the impression that the show cause notice was dropped on account of the reply given.
- (n) **28.10.2015:** One of the Directors of the petitioner Company received a letter from Ass. Commissioner of Customs, Kandla referring to Order in Original dated 7.2.2013 and requested the to pay the Government dues in pursuance of said order.



- (o) **7.11.2015:** The Director sent his reply on 7.11.2015 indicating therein that no such Order in Original had been issued and resulting into any order of such nature.
- (p) The Asst. Commissioner of Customs, Kandla, under his covering letter dtd 18.1.2016 sent copy of Order in Original dated 7.2.2013 which was passed on the show cause notice dated 21.8.2012.
- (q) The said Order in Original refers to the show cause notice dated 21.8.2012 in respect of the Advance Licence No. 810048707 dated 3.3.2005 (the petitioner submitted that this date appears to be incorrect because the correct date against the said licence number was 20.6.2005) In short, the said order was in respect of the duty to be levied in respect of the import licence No. 810048707 only.
- (r) The petitioner Company sent detailed representation dated 11.3.2016 to the Asst. / Dy. Commissioner of Customs, indicating clearly that the earlier show cause notice dated 7.3.2008 was replied by giving all the details, copy of export evidences and informed the concerned that 2<sup>nd</sup> show cause notice dated 21.8.2012 had never been received by the company. Nothing was heard thereafter for about 8 to 9 months.
- (s) **4.1.2017:** The Dy. Commissioner of Customs, sent letter to the petitioner Company informing that legal provisions would not permit the same authority to drop or withdraw a confirmed demand notice and petitioners will have to take out appropriate proceedings in the form of Appeal only against the adjudicatory order dated 7.2.2013.

15. Against the backdrops of the aforesaid factual aspects, this Court is called upon to examine the rival contentions of the counsels for the parties. It is required to be noted that there cannot be any dispute of proposition of law that ordinarily when the statutory remedy is available in the form of Appeal or Revision then the High Court would not entertain the writ petition under Article 226 of the Constitution of India challenging the order which is amenable to the statutory appellate jurisdiction. It is also required to be noted that in the instance case, there exists no power in the authority to condone delay beyond the limitation prescribed in the statute and in such a situation, as the Full Bench of Gujarat High Court held in case of Panoli Intermediate (India) Pvt. Ltd (supra), the facts and circumstances of case would permit maintaining of the writ petition under Article 226 of the Constitution of India, the following observation of said decision therefore deserve to be set out as under:

*“31. We may now proceed to answer the question -*

*1. Question No.1 is answered in negative by observing that the limitation provided under section 35 of the Act cannot be condoned in filing the appeal beyond the period of 30 days as provided by the proviso nor the appeal can be filed beyond the period of 90 days.*

*2. The second question is answered in negative to the extent that the petition under Article 226 of the Constitution would not lie for the purpose of condonation of delay in filing the appeal.*

*3. On the third question, the answer is in affirmative, but with the*

*clarification that-*

*A. The petition under Article 226 of the Constitution can be preferred for challenging the order passed by the original adjudicating authority in following circumstances that -*

*A.1) The authority has passed the order without jurisdiction and by assuming jurisdiction which there exist none, or*

*A.2) Has exercised the power in excess of the jurisdiction and by overstepping or crossing the limits of jurisdiction, or*

*A.3) Has acted in flagrant disregard to law or rules or procedure or acted in violation of principles of natural justice where no procedure is specified.*

*A. Resultantly, there is failure of justice or it has resulted into gross injustice.*

*We may also sum up by saying that the power is there even in aforesaid circumstances, but the exercise is discretionary which will be governed solely by the dictates of the judicial conscience enriched by judicial experience and practical wisdom of the judge."*

Thus, the aforesaid proposition of law laid down by the full bench of this Court enumerates the instances and examples in which the availability of alternative remedy and expiring of the limitation would not deter this Court from entertaining the petition and granting relief under Article 226 of the Constitution of India.

16. Bearing this proposition of law in mind, if one examines the contentions on behalf of the respondent then one would appreciate that the respondent's counsel is correct in saying that the petitioners did have copy of the order from the year 2016 and they could have approached the authority but the mere copy in a given facts would not be sufficient to assail the Order in Original when peculiar facts and circumstances of the case pleaded in the present matter would indicate that the respondents have not challenged the EODC produced on record dated 11.6.2008, then, the very fundamental basis of issuance of show cause notice gets knocked off.

17. The peculiar facts of the present case would leaves no room for doubt that the Order in Original impugned in this proceedings dated 7.2.2013 is essentially in respect of the license No, 0810048707 dated 20.6.2005 and when the same is not under dispute, the copy of EODC produced on record at page nos. 21-22 dated 11.6.2008 also is not disputed and therefore, close perusal thereof would clearly indicate that the show cause notice and the resultant order were without jurisdiction of law and hence not tenable in eye of law. The Competent Authority gets jurisdiction to issue show cause notice and pass Order in Order only in the eventuality when the export obligation against the advance licence remained to be discharged. In the instant case when the EODC dated 11.6.2008 is not disputed by the authority, as could be seen from the annexures to the petition as well as the memo of the affidavit-in-reply, one can safely conclude that there exists no justification for issuance of show cause notice dated 21.8.2012 and therefore, the notice was issued, there existed

no reasons and the jurisdictional facts were not available to the authority for issuing the same which has rendered not only the show cause notice dated 21.8.2012 but the resultant order dated 7.2.2013 untenable in eye of law.

18. The Court is also of the view that apart from the lack of jurisdiction aspect, there is one more aspect which needs to be taken into consideration that the respondents have failed in establishing the fact that the show cause notice dated 21.8.2012 had ever been served upon the petitioners and/or authorized agent thereof. In other words, it can well be said that when the respondents failed in establishing the due service of notice dated 21.8.2012 and they proceeded ex-parte, passing an order on 7.2.2013, then, there is blatant violation of principles of natural justice, which would result into quashment of both under Article 226 of the Constitution of India.

19. Thus for the aforesaid reasons, the Court is of the view that the petition deserves to be allowed and show cause notice dated 21.8.2012 and the resultant order dated 7.2.2013 are required to be quashed and set aside and are hereby quashed and set aside. There shall be no order as to costs.

**(S.R.BRAHMBHATT, J)**

**(A.G.URAIZEE, J)**

P.S. JOSHI/manoj