the plaintiffs should not feel aggrieved and be not permitted to knock at the door of the Court."

Section 158 (2) (vi) of the Act only says that correction in the revenue record can only be made by a revenue officer; civil Court will determine the rights of the parties leaving it to the revenue officers to correct the revenue record in accordance with the adjudication made by the civil Court of the rights of the parties. Section 158 (2) (vi) only pertains to the correction of entries in the revenue record and does not override the provisions of Section 45 of the Act and any person aggrieved by an entry in the record of rights can sue for declaration in the civil Court. The view taken by the first appellate Court is not sustainable at law. Consequently, the judgment and decree of the first appellate Court cannot be sustained. The first appellate Court did not decide issue No. 4, which was a material issue arising for determination and hastened to dispose of the appeal on purely technical grounds. Under these circumstances, there is no other alternative but to remand the case to the first appellate Court to decide the appeal afresh.

(9) For the reasons stated above, the appeal succeeds, the judgment and decree of the first appellate Court are set aside to the extent it held that the civil Court had no jurisdiction to entertain the suit and the Additional District Judge, Amritsar is directed to restore the appeal at its original number and dispose of the same in accordance with law. There will be no order as to costs. The parties through their counsel are directed to appear before the Additional District Judge, Amritsar on March 27, 1992.

J.S.T.

Before Hon'ble Jawahar Lal Gupta, J.

M/S SAMANA STEEL PIPES PVT. LTD.,—*Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 10438 *of* 1989.

28th September, 1993.

Central Excise Act, 1944—*Section* 11-*A,*—*Central Excise Rules,* 1944—*Rules* 56-*A* & 57-*A*—*Rule* 174—*Central Excise Notification dated* 20*th May,* 1988 *by the Finance Ministry—Exemption from payment of excise duty on tubes and pipes manufactured from*

strips and flats—However, tubes and pipes made from bars not exempted—Question whether pipes are made from bars or strips and flats requires evidence which cannot be decided in writ jurisdiction—The question can be decided by authorities competent under the statute—Alternative remedy of appeal—Writ not maintainable—By mere admission of writ petition it cannot be said that petitioner cannot be relegated to the alternative remedy—Order calling upon the manufacturer to obtain licence under Rule 174 *is not liable to be quashed under Article* 226.

Held, that even if it is assumed that the petitioner was legitimately entitled to dispute his liability to obtain a licence, he had an effective alternative remedy under the law.

(Para 23)

Further held, that mere admission of the petition cannot mean that this Court has to record evidence and record findings of fact.

(Para 24)

Further held, that it is not the function of the High Court to decide as to whether the petitioner is using Bars and Strips and flats. It is for the appropriate authority under the Act.

(Para 24)

Further held, that there is a real controversy on facts which cannot be resolved in writ proceedings. The only forum competent to decide this matter is the Department.

(Para 17)

H. S. Sawhney, Advocate, *for the Petitioner.*

G. B. S. Sodhi, Advocate, Raghbir Chaudhary, Advocate, *for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioners in this bunch of 26 writ petitions viz. Civil Writ Petitions Nos. 10438 of 1989, 7263 of 1991, 12156, 5839, 5960, 5979, 5990, 6013, 6024, 6025, 6026, 6027, 6029, 6030, 6031, 6032, 6045, 6046, 6227, 6372, 6442, 6471, 6050, 7384, 7551 and 8555 of 1992, claim that they are manufacturing pipes from strips and flats and not bars. Consequently, they claim that they are not liable to apply for a licence under the Central Excise and Salt Act, 1944 or to pay excise duty. The respondents dispute this and claim that the petitioners are manufacturing the pipes from bars and are thus liable to pay the excise duty. The record of the case is fairly sizable. However, the point that arises for consideration is short viz. are the petitioners manufacturing pipes from bars and thus liable to pay excise

duty? Can this question be determined in a writ petition? Learned counsel for the parties have referred to the facts as averred in Civil Writ petition No. 10438 of 1989 only. These may be briefly noticed.

(2) The petitioner is a Private Limited Company. It has set up a small Scale Unit for the manufacture of "conduit pipes with Electrial Resistance Welding Process———". It is averred that the petitioner manufactures pipes by using Hot Rolled Strips/flats which it purchases from different mills situated at Mandi Gobindgarh. The strips/flats are passed through rollers which give them a round shape and when passed through welding units, the finished product called the conduit pipes, is produced. It is the case of the petitioner that it uses strips/flats having a thickness of less than 3 mm. and a width of 75 mm. to 182 mm. The Unit came in to production on May 27, 1988.

(3) On August 9, 1989, respondent No. 3, the Superintendent, Central Excise Range I, Patiala, visited the factory premises of the petitioner. He passed an order on the same day which read as under :—

> "Please refer to my visit in your unit on 9th August, 1989. You are hereby requested to apply for C.E. Licence immediately, as goods manufactured by you do not enjoy exemption under Notification No. 202/88 dated 20th May, 1988. You should clear the final product from your factory after paying duty at appropriate rates."

(4) The petitioner is aggrieved by the above order. It has been averred that the controversy had started when the Steel Rolling Mills of Gobindgarh had filed writ petitions in this Court viz. Civil Writ Petitions Nos. 7747, 7860 and 7871 of 1989 claiming that they were manufacturing bars and not strips/flats and as such, they were liable to pay excise duty at the rate of Rs. 500 per metric tonne instead of Rs. 700 per metric tonne. The petitioner states that it had been directed to pay "the difference of Rs. 200 per M.T., as the department is suffering this loss on account of the stay orders granted by the High Court." It is averred that,—*vide* notification dated May 20, 1988, the tubes and pipes manufactured with the use of strips and flats of thickness not exceeding 5 mm. have been exempted from duty. On this basis, it is claimed that the goods manufactured by the petitioner are totally exempt from payment of Central Excise and that the impugned order is arbitrary and illegal. It has been challenged as being violative of Section 11-A of the Central Excise Act, 1944 and the principles of natural justice. On this basis, the petitioner claims that the order dated

August 9, 1989 calling upon it to obtain a licence and to clear the goods after payment of excise be quashed.

(5) A written statement has been filed by respondent No. 3. It has been stated that the pipes and tubes manufactured by the petitioner can be exempted from duty under Notification dated May 20, 1988 if the goods are manufactured with the use of skelp, Hoops, Sheets, strips or flats not exceeding 5 mm. in thickness and in case the duty has already been paid by the manufacturer of the raw material without claiming any credit under Rules 56-A and 57-A of the Central Excise Rules, 1944. However, in the instant case, "the petitioner is manufacturing his products from 'Bars below 3 mm in thickness' and the said product is not entitled from exemption under the above referred Notification." It is in this situation that the petitioner was requested to apply for Central Excise Licence. On this basis, it is claimed that the goods manufactured by the petitioner are not exempt from the payment of excise duty. In support of this averment, the respondent has relied upon the photo copies of the two gate passes produced by the petitioner as Annexure P.5 and P.6 with the writ petition which show that it had purchased Bars below 3 mm. in thickness from A. K. Steel Industries, Gobindgarh. The averment of the petitioner that it had been directed to pay the difference of Rs. 200 per m.t. by respondent No. 3 has been denied. On these premises, it has been claimed that the petitioner is not exempt from payment of excise duty and that the order passed by the respondent is legal and valid.

(6) The petitioner has filed a replication. The averments made in the petition have been reiterated. It has been further averred that "the petitioner is manufacturing pipes and tubes by Electrical Resistance Welding (for short ERW process) and by this process pipes and tubes can only be manufactured from flat rolled products. Pipes cannot be manufactured from bars. This position has been accepted by the Central Excise Department in their written statement, with which they had attached Annexure R-3, filed in C.W.P. No. 7747 of 1989———." Reference has also been made to the orders passed by the Central Excise Gold Appellate Tribunal, in certain cases.

(7) I have heard the learned counsel for the parties.

(8) Mr. H. S. Sawhney, learned counsel for the petitioners in all the cases has contended that the impugned order is invalid as

it was issued without the grant of any opportunity as required under Section 11-A of the Central Excise and Salt Act, 1944 (hereinafter referred to as 'the Act'). He has further contended that the petitioner could not be called upon to obtain a licence under Rule 174 of the Central Excise Rules 1944 as the inputs used by the petitioners are flats or strips and not bars. The contentions raised by the learned counsel for the petitioner have been controverted by the learned counsel for the respondents.

(9) Prior to the year 1944, there were no less than 10 Excise Acts and various sets of statutory Rules governing the levy and payment of excise duty. In the year 1944, it was decided to consolidate all the laws in a single enactment. Accordingly, the Central Excise and Salt Act, 1944 (Act No. 2 of 1944) was promulgated. This act was followed by the promulgation of the Central Excise Rules, 1944. Thereafter, various notifications and departmental instructions have been issued.

(10) Excise duty being one of the major sources of the revenue to the Government, an almost complete Code governing the levy and collection of excise duty has been framed. The provision for obtaining of licences has been made in Section 6 and the procedure therefore has been laid down in Rule 174. In accordance with these provisions, a manufacturer of excisable goods is required to obtain a licence and cannot conduct his business "in regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted by a duly authorised officer in the proper form."

(11) Rule 174-A authorises the Central Government to exempt from the operation of Rule 174 any goods or class of goods which are wholly exempted from the duty of excise leviable thereon or any class of manufacturers who get their goods manufactured on their account from other person or persons or the goods which are produced or manufactured in a free trade zone. Unless specifically exempted by a notification in the official Gazette, no person can engage in the production or manufacture of any goods specified in the Schedule except under the authority and in accordance with the terms and conditions of a licence granted under the Act. Is the petitioner engaged in the production or manufacture of specified goods ?

(12) The tubes and pipes of steel manufactured by the petitioner are included in Chapter 73 of the Central Excise Tarriff. The rate of Excise duty has also been prescribed. Consequently, in

accordance with the provisions of Section 6 and Rule 174, the petitioner is manufacturing an excisable good and is, thus, liable to obtain a licence. The petitioner, however, claims that it has been granted exemption,—*vide* notification dated May 20, 1988 by the Finance Ministry. It is apt to notice the relevant part of this notification which reads as under :—

"CUSTOMS AND CENTRAL EXCISE BULLETIN NO. CX. 9/88-89, DATED 23RD MAY, 1988 NOTIFICATION NO. 202/88—CENTRAL EXCISE ? DATED THE 20TH MAY, 1988/30 VAISAKHA ? 1910 (SAKA).

(13) In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rule 1944, and in supersession of the notification of the Government of India in the ministry of Finance (Department of Revenue) No. 90/88—Central Excises, dated the 1st March, 1988, the Central Government hereby exempts goods of the description specified in column (3) of the Table hereto annexed (such goods being hereinafter referred to as "final products") and falling within Chapter 72, Chapter 73 or heading No. 84, 54 of the Schedule to the Central Excise Tarrif Act, 1985 (5 of 1986) from the whole of the duty of excise leviable thereon which is specified in the said Schedule.

(14) Provided that such final products are made from any goods of the description specified in the corresponding entry in column (2) of the said Table (such goods being hereinafter referred to as "inputs") and falling within the Chapter 72 or Chapter 73 of the said Schedule on which the duty of excise leviable under the said schedule or the additional duty leviable under the Customs Tarrif Act, 1975 (51 of 1975).

(15) Provided further that no credit of the duty paid on the inputs has been taken under rule 56A or rule 57A of the said rules

Explanation :—

For the purposes of this notification all stocks of inputs in the country, except such stocks as are clearly recognisable as being non-duty paid or charged to Nil rate of duty, shall be deemed to be the inputs on which duty has already been paid.

THE TABLE

Sr. No.	Description of inputs	Description of final products
(1)	(2)	(3)
xx	xx	xx
3.	Skelp, hoops, sheets of thickness not exceeding 5 mm, strips of thickness not execcding 5 mm and flats of thickness not execeding 5 mm.	Tubes and pipes and blanks therefor of steel other than seamless tubes and pipes of steel.
xx	xx	xx

C. P. Srivastava,
Under-Secretary to the Government of India.

(16) A perusal of the above notification shows that a manufacturer of tubes and pipes can claim exemption if :—

(i) the goods have been produced by using Skelp, hoops, sheets, strips and flats of thickness not exceeding 5 mm

(ii) the final products are made from goods on which "the duty of excise leviable under the said Schedule or the additional duty leviable under the Customs Tarrif Act, 1975 (51 of 1975) as the case may be, has already been paid ; and

(iii) no credit of the duty paid on the inputs has been taken under Rule 56-A or Rule 57-A of the said rules.

(17) In the present case, the petitioner claims that it is manufacturing the final product by using strips and flats of thickness not exceeding 5 mm. The respondents dispute this. They claim that the petitioner is using bars. From the record, it is evident that the petitioner had been purchasing bars below 3 mm in thickness from A. K. Steel Industries. Copies of the two documents produced by the petitioner as Annexures P-5 and P-6 with the writ petition show the purchase of bars. In this situation, it cannot be said that

the respondents have raised a totally false plea or that the petitioner has never used bars in the process of manufacturing pipes. In any case, there is a real controversy on facts which cannot be resolved in writ proceedings. The only forum competent to decide this matter is the Department.

(18) Mr. Sawhney, however, tried to demonstrate that it is unthinkable that a manufacturer of pipes would use bars and not strips or flats as inputs. He contended that the plea raised by the respondents was apparently untenable. Can this court determine whether the petitioner is manufacturing pipes by using bars, strips or flats ?

(19) A writ court is not competent to determine this question. It requires evidence. It is a matter for the experts to decide. It is within the exclusive domain of the concerned authority. Such a question cannot be decided by this court in the exercise of its writ jurisdiction. The expressions viz. bar, strip or flat have a definite connotation in the Industry and are understood by the authorities. Determination of such a question is normally beyond the jurisdiction of this Court under Article 226 of the Constitution.

(20) Faced with this situation, learned counsel for the petitioner contended that before calling upon the petitioner to obtain a licence and to pay excise duty, it was incumbent on the authority to issue a Show Cause Notice under Section 11-A. The said provision reads as under :—

> 11A. Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded—
>
> (1) When any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :—

(21) Provided that whereby any duty or excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement

or superession of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect as if for the words "Central Excise Officer", the words "Collector of Central Excise" for the words "six months".

Explanation :—Whether the services of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid prior of six months or five years, as the case may be.

(2) The Assistant Collector of Central Excise or, as the case may be, the Collector of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined.

(3) For the purposes of this section :

(i) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India ;

(ii) "relevant date" means—

(a) In the case of excisable goods on which duty of excise has not been levied or paid or has been short levied or short paid—

(A) where under the rules made under this Act a monthly return, showing particulars of the duty paid on the excisable goods removed during the month to which the said return relates, is to be filed by a manufacturer or producer or a licensee of a warehouse, as the case may be the date on which such return is so filed.

(B) where no monthly return as aforesaid is filed, the last date on which such return is to be filed under the said rules ;

(C) In any other case, the date on which the duty is to be paid under this Act or the rules made thereof ;

(b) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after final assessment thereof ;

(c) in the case of excisable goods on which duty of excise has been erroneously refunded the date of such refund."

(22) A perusal of the above provisions shows that it relates to the recovery of duty which has not been levied or paid. It has no connection with the grant of a licence. It is, consequently, not attracted to the facts and circumstances of the present case Mr. Sawhney, however, placed reliance on *Gokak Patel Volkart Ltd.* v. *Collector of Central Excise Belgaum* (1), and *Union of India and others* v. *Madhumilan Syntex Pvt. Ltd. and another* (2). Neither of these cases has any application to the facts of the present case. In Gokak Patel's case, it was *inter alia* held that the issue of a notice is a condition precedent to the raising of a demand under Section 11-A (2). Similarly, in *Madhumilan Sintex's case,* it was held that before any demand was made on any person in respect of "non-levy or short levy or under payment of duty, a notice requiring him to show cause why he should not pay the amounts specified in the notice, must be served on him. In the present case, no demand whatsoever had been made for payment of any amount of money. The petitioner had only been called upon to obtain a licence. This order was passed after respondent No. 3 had visited the factory premises of the petitioner. The provision of Section 11-A is not attracted. In view of this position, the contention raised on behalf of the petitioner, cannot be accepted.

(23) In any event, even if it is assumed that the petitioner was legitimately entitled to dispute his liability to obtain a licence, he had an effective alternative remedy under the law. In fact, it was conceded by Mr. Sawhney that the petitioner could have filed an appeal against the impugned order. This was admittedly not done.

(1) A.I.R. 1987 S.C. 1161.
(2) A.I.R. 1988 S.C. 1236.

If an appeal had been filed, the appropriate authority would have determined facts after considering relevant material and come to a positive conclusion. The petitioner has chosen to avoid that course of action for no justifiable reason.

(24) Mr. Sawhney, however, submits that after the admission of the writ petition, the petition should not be relegated to the alternative remedy. The plea is untenable. In a case like the present one which requires determination of facts, the remedy of writ petition is wholly misconceived. In fact the one remedy provided under the Statute by way of appeal etc. is the only appropriate remedy. Consequently, mere admission of the petition cannot mean that this Court has to record evidence and record findings of fact. In the circumstances of this case, the plea cannot be sustained. It is not the function of the High Court to decide as to whether the petitioner is using Bars and strips and flats. It is for the appropriate authority under the Act.

(25) No other point was urged.

(26) Accordingly, there is no merit in these petitions, which are consequently, dismissed. The parties are, however, left to bear their own costs.

R.N.R.

Before Hon'ble G. R. Majithia & N. K. Sodhi, JJ.

EX. HEAD CONSTABLE JAGAN NATH,—*Petitioner.*

versus

THE STATE OF PUNJAB & ANOTHER,—*Respondents.*

Civil Writ Petition No. 15126 *of* 1990

20th December, 1993

Constitution of India 1950—*Arts.* 226/227—*Punjab Civil Services (Pre-mature Retirement) Rules* 1975—3(1) (*a*)—*Whether forfeited service can be taken into account for the purpose of determination of qualifying service for prematurely retiring an officer from service—Held that disciplinary authority rightly counted forfeited approved service for determining qualifying service.*

Held, that we accordingly overrule the judgment of the learned Single Judge in Gurdial Singh case (supra) to the extent to which