

Cheques issued before determination of debt, before adjudication of debt if cheques are obtained - complaint not maintainable. Accused no. 1 as a director of the company willingly tendered seven post dated cheques towards evasion of excise duty and wrong availment of Cenvat Credit, complaint for dishonour of cheque ,contention of applicant that the cheques were obtained by threat, pressure and duress are without any basis and are palpably false, question as to legally enforceability of debt , held, demand of payment towards evasion of excise duty without adjudication in accordance with the provisions of Excise Act and Rules framed there under, requirement of satisfaction of two conditions u/s 138 of Act for the attraction of complaint u/s 138 of NI Act , cheque is required to be issued to towards discharge wholly or in part or any debt or other liability of the drawer to the payee without adjudicating upon evasion of excise duty by the competent authority, cheques in question obtained by the complainant, in the absence of any adjudication by a competent authority under the provisions of the Act as regards the liability of the applicants to pay the excise duty, it cannot be said that on the date when the cheques were drawn there was an existing enforceable debt or liability, complaints quashed,applications allowed.

Section 138 of Negotiable Instruments Act, reflects the anxiety of the legislature to usher in a new healthy commercial morality through the instrumentality of the penal law. Here is a classic example where, as part of an attempt to evolve a healthy norm of commercial behavior, the principal of social engineering through the instrumentality of penal law is put into operation. What was, prior to the amendment of the Negotiable Instruments Act in 1988 only a moral or civil wrong, has been transformed and exalted to the position of a crime by a deft amendment of the Statute.

Nandeshwari Steel Ltd. v. State Of Gujarat 2018 (1) DCR 181