

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1762/96

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

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New Delhi, this the 7th day of March, 2000

Shri G.N.Chandrasekaran
s/o Shri K.G.Narayanaswamy
r/o A6A, 'A' Street
M.I.G. Flat, Mayapuri
New Delhi - 110 064 and
Senior Technical Officer
Department of Revenue
Ministry of Finance
Room No.24, 3rd Floor
Jeevandeep Building
Parliament Street
New Delhi - 110 001. Applicant

(Applicant in person)

Vs.

1. Union of India (Through the Secretary to the Govt. of India
Department of Revenue
Ministry of Finance
Central Secretariat
North Block
New Delhi - 110 001).
2. The Chief Vigilance Officer
Central Board of Excise & Customs
Room No.30-A, 3rd Floor
Jeevandeep Building
Parliament Street
New Delhi - 110 001.
3. The Commissioner of Central Excise
121, Uthamar Gandhi Road
(N.H.Road), Nungambakkam
Madras - 600 034. (Tamilnadu). Respondents
(By Shri D.S.Chauhan, Assistant Ad.V Section, M/o
Finance, Department of Revenue, Departmental
Representative on behalf of the respondents)

O R D E R (Oral)

By Reddy, J.-

The applicant while working as Superintendent of Central Excise in the Commissionerate of Central Excise, Madras, was served with a charge-sheet vide Memo dated 14.5.1986 by the Principal Collector (now Chief Commissioner) of Customs & Central Excise under Rule 14 of CCS (CCA) Rules, 1965. The Article of charge reads as under:

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"That the said Shri G.N.Chandrasekaran, while functioning as Superintendent of Central Excise of Range III A of Madras III Division, Madras during the period from 13.6.83 to 8.7.84 committed gross misconduct and failed to maintain absolute integrity and devotion to duty in as much as he during the aforesaid period in collusion with his subordinate (viz.) Shri Bruce Conrad D'Costa, Inspector of Central Excise and actuated by corrupt monetary consideration, allowed evasion of payment of excise duty to an extent of Rs.1,02,342/- by M/s Beauty Dyers, 76 Rundals Road, Vepery, Madras in the matter of processing and bleaching, dyeing, crinkling etc. of fabrics carried on by the said firm surreptitiously, by refraining from exercising proper verification and inspection of the said firm's account books and other records pertaining to stock, purchase of materials, manufacture etc. and thereby contravened the provisions of Rule 3(1)(i) and (ii) of the CCS (C) Rules 1964."

2. As the applicant had denied the allegations, a departmental enquiry has been conducted by the Commissioner of Central Excise. The enquiry officer has found that the applicant was responsible for the Company, namely, M/s Beauty Dyers, managing to evade the central excise duty to the tune of Rs.1,02,342/-. He, however, found that the allegations regarding the payments mentioned Ex.S-12 made to him for corrupt purposes remains unsubstantiated. In the result the enquiry officer concluded that the charge was partially proved to the extent mentioned in para 3.2(a) to (e) of the enquiry officer's report. The disciplinary authority after considering the findings of the enquiry officer and going through the records of the case and after considering the representations made by the applicant to the enquiry officer's report, agreed with the findings of the enquiry officer and imposed the penalty of reducing the pay of the applicant from Rs.3125/- to Rs.3050/- till he earns the next increment and that he would not earn increases in his pay during the punishment period and on expiry of that period, the reduction will not have effect of

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that period, the reduction will not have effect of postponing the future increments of pay, vide order dated 28.6.1991, Annexure-A3. The appellate authority by its order dated 31.8.1995 confirmed the order of the disciplinary authority. Challenging the above orders, the applicant came up before us in the present OA.

3. We have heard the applicant in person and perused the pleadings carefully. None appears for the respondents, however, Shri D.S.Chauhan, Assistant, M/o Finance, Department of Expenditure, Departmental Representative is present on behalf of the respondents but no counsel is present. Since the matter is of 1996 and the party in person has argued the case, we proceed to dispose of the matter on merits.

4. The applicant who was the Superintendent of Central Excise in the Commissionerate of Central Excise, Madras allowed evasion of excise duty to an extent of Rs.1,02,342 by M/s Beauty Dyers (for short Company), in the matter of processing and bleaching, dyeing, crinkling etc. of fabrics carried on by the said Company in collusion with his subordinate, namely, Shri Bruce Conrad D'Costa, Inspector of Central Excise, actuated by the corrupt monetary considerations. The enquiry officer, as stated supra, found that the applicant was responsible for the evading of the tax by ^{✓ Company} the said L; and the disciplinary authority agreeing with the said findings, imposed the penalty which is now before us.

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5. The applicant vehemently contends that enquiry is vitiated as he was not supplied the documents, namely, internal audit report, FIR registered by the CBI against the ~~Company~~ and other ceased seized documents. The respondents have not supplied these documents on the ground that the documents were not available with them. It is not the case of the applicant that these documents were relied upon in the departmental enquiry. If the documents are material ~~xxx~~ and any of the documents were relied upon by the enquiry officer or by the disciplinary authority, such documents should have been supplied to the delinquent officer. It should be seen that FIR has been registered by the CBI after raiding the Company. The criminal case against the Company is not the subject matter before the enquiry officer. What was sought to be enquired into against the applicant was whether he was responsible for allowing the above ~~Company~~ to evade the tax. In the enquiry, the applicant has justified that he has done his duty and discharged his functions that he is supposed to discharge as Superintendent of the Central Excise. It should also be seen that the respondents could not supply the documents as it was stated that those documents were not available with them. In the circumstances, we do not find any substance in the contention raised by the applicant in this regard.

6. It is further contended that the applicant cannot be said to be aware of the "Crinkling process" and that it was dutiable and therefore he cannot be found fault ^{with} for evasion of duty by adopting such process by the said Company. He also argues that the

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evidence collected by the enquiry officer is wholly insufficient to prove the charge and that the witnesses could not have been believed by the Enquiry Officer. The enquiry officer has discussed the entire evidence on record to consider whether the evidence was sufficient to bring home the guilt of the applicant. The enquiry officer has found that there was no sufficient evidence, regarding the allegation as to the payment of money to the applicant by the said Company. But as regards the Charge of allowing the ~~Company~~ to avoid the duty to the extent of Rs.1,02,242/-, the enquiry officer has clearly found that the applicant was responsible for the same as the ~~Company~~ has adopted the practice of Crinkling and such process was not exempted from payment of Central Excise Duty. The disciplinary authority has also analysed the entire evidence on record and gave cogent reasons in his elaborate order. He considered the prosecution witnesses SW1 to SW3 and the documents that were marked Ex.S-1 to Ex.S-79 on behalf of the prosecution. No defence witnesses were produced but the applicant filed D-1 to D-7. The disciplinary authority have considered the entire evidence. As regards the method of Crinkling Process, the disciplinary authority has noted the discussion of the enquiry officer in the enquiry officer's report and found that the finding given by the enquiry officer that crinkling is a dutiable process and the applicant in spite of the inspection of the ~~Company~~ allowed to evade Central Excise Duty. The contention of the applicant therefore that the applicant was not aware of the Crinkling process and that there was no sufficient evidence on record cannot be accepted. It should be noted that the parameters of judicial review are

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limited and we cannot go into the sufficiency or otherwise of the evidence on record. It is for the disciplinary authority to arrive at his own conclusions. Particularly, when the disciplinary authority has considered all aspects of the matter and found that the applicant was responsible for the ~~Company~~ to evade duty, and gave a clear finding that the applicant was aware that the process done by the ~~Company~~ cannot be equated with the scouring process, the and that the applicant should not have given any benefit under the exemption notification No.253/82, it is not possible to interfere with the impugned orders.

7. It is next contended that the appellate authority, disposed of the appeal without giving any hearing to the applicant, though such hearing has been requested by the applicant. Though the appellate authority has passed an elaborate order, considering the main contentions raised by the applicant, the applicant was not shown to have been heard by the appellate authority.

8. Rule 22 to 27 of the CCS (CCA) Rules, 1965 do not provide a right of hearing in the appeal. Rule 27 relates to the consideration of the appeal. Sub rule (2) provides that the appellate authority shall consider whether the procedure laid down in the Rules has been complied with and if not,; whether the findings of the disciplinary authority are warranted by the evidence on the record; and whether the penalty or the enhanced penalty imposed is adequate or inadequate or severe and pass orders-. Thus we do not find any provision in the rules for hearing the

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Charged Officer by the appellate authority. The learned counsel for the applicant however places a strong reliance upon Ram Chander Vs. Union of India & Others, ATR 1986(2) SC 252 to contend that the expression 'consider' used in sub rule (2) of Rule 27 takes in the duty of the appellate authority to hear and consider the evidence on record and dispose of the appeal. It is true that the Supreme Court held that the right to make a representation on the proposed penalty which was to be found in clause (2) of Article 311 of the Constitution, having been taken away by the 42nd amendment, there is no opportunity for the applicant to plead about the nature of penalty which was levied by the disciplinary authority, except before the appellate authority, hence the appellate authority should hear the charged officer against the penalty levied by the disciplinary authority as to the penalty of dismissal, removal or reduction in rank. In that view of the matter, the Supreme Court held that even in the absence of any provision in the service rules, the appellate authority should give a hearing to the charged Officer against the penalty imposed by the disciplinary authority, if charged officer was dismissed or removed or reduced in rank. However, we are of the view that ratio of Ram Chander's case has no application to the case in hand, for the simple reason in the instant case, the applicant was neither dismissed nor removed nor reduced in rank. The penalty that was levied was the reduction in the scale of pay. In the circumstances, Ram Chander (Supra) will not come to the aid of the applicant.

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9. The appellate authority has given elaborate and cogent reasons in its order. We do not find any reason to interfere with the order of the disciplinary authority even on the penalty that was levied by him. In the circumstances, we do not see any merit in the contention of the applicant.

10. The last contention also has no force either. It is pointed out that the review filed by the applicant, against the order of the appellate authority before the President of India, was wrongly rejected on the ground that there was no right of review under Rule 22 of CCS (CCA) Rules, 1965. He relies upon the decision of the Full Bench of this Tribunal in Pritam Singh vs. Union of India & Others, (OA No.2818/92, Principal Bench, decided 7.2.2000), wherein it was held that revision is maintainable against the order of the President under sub-rule (2) of Rule 29 of the said Rules. The review/revision filed by the applicant against the appellate authority's order was dismissed by an order dated 14.5.1996 which reads as follows:

"I am directed to refer to the above subject and to intimate that your petition dated 29.2.1996 is rejected as no new facts have been brought out in the said petition and also as per rule 22 of the CCS (CCA) Rules, 1965 no appeal lies against the order of the President of India."

11. A perusal of the order makes it clear that the review was rejected on the ground that no new facts have been brought out in the said petition. Hence it cannot be stated that the review has been dismissed as incompetent. No doubt it was stated that

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under Rule 22 of the Rules no appeal lies against the order of the President of India for which no exception can be made.

12. In view of the aforesaid discussion, the OA fails and is accordingly dismissed. No costs.

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(SHANTA SHATRY)
MEMBER(A)

V.Rajagopala Reddy

(V.RAJAGOPALA REDDY)
VICE-CHAIRMAN(J)

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