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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CP 292/2005
OA 3049/2004
MA 1580/2005

New Delhi this the 29th day of November, 2005

**Hon'ble Mr. M.P.Singh, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)**

Shri Satnam Singh
S/O Late Shri Harbhajan Singh,
Joint Commissioner, Central Excise,
Kolkatta.

(By Advocate Shri B.S. Mainee)

Applicant

VERSUS

1. Shri K.M.Chandershekhar,
Secretary to the Govt. of India
Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs,
North Block,
New Delhi.
2. Shri M.G.Jai Raman,
Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi.

Respondents

(By Advocate Shri Madhav Panikar)



ORDER (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J)

Respondents have filed MA 1580/2005 seeking extension of time to implement the Tribunal's order dated 23.12.2004 whereby respondents were directed to direct the enquiry officer to complete the enquiry at the earliest preferably within six months of the receipt of the certified copy of the present order subject to applicant co-operating in the same.

2. It is stated by the respondents that after the orders were received by them they had appointed Sh. Kaushal Srivastava as Inquiry Officer on 8.2.2005 but he had to be relieved due to some administrative reasons. Thereafter Shri K.R.Bhargava was appointed as Inquiry Officer but due to his pre occupation the enquiry could not be concluded. He has started the inquiry but from 21.7.2005 applicant is not cooperating, therefore time may be extended by another 6 months.

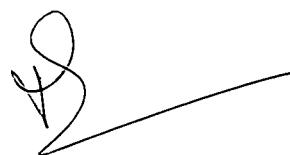
3. Application for extension of time was vigorously opposed by the counsel for applicant, on the ground that this MA has been filed after the expiry of six months, therefore, this Court has become functus officio and MA cannot be entertained. It may, therefore, be dismissed. He has relied on the judgment given by the Tribunal in the case of Union of India Vs. Suraj Bhan reported



in ATJ 2004 (1) page 330) and K.B.Bhardwaj Vs. UOI reported in 2002(2) ATJ 478).

3. We have heard both the learned counsel and perused the pleadings as well. Counsel for respondents produced two letters dated 30.9.2005 written by Shri Rajiv Rai, Deputy Secretary to the Govt. of India to counsel intimating him that the case was fixed by the Inquiry Officer on 21.7.2005, 17.8.2005, 6.9.2005, 16.9.2005 and 26.9.2005. However, applicant did not cooperate inasmuch as he has stated that he has already filed CP and some orders are likely to be passed thereon and also letter written by applicant himself addressed to the Inquiry Officer to the effect that he is retiring on 30.9.2005, as such he may not be in a position to examine and receive the official documents and it is very likely that he may not be able to keep them safely because he is required to pack up his belongings hurriedly. He has also stated that since he has filed CP it would be better to await the outcome of the CP as order is likely to be passed by the Tribunal.

4. From the above facts it is clear that respondents as well as applicant both are at fault. Initially respondents took time to change the Inquiry Officer but after Inquiry Officer was changed, applicant did not cooperate with the Inquiry Officer as is clear that inquiry was fixed on 21.7.2005, 17.8.2005, 6.9.2005,



16.9.2005 and 26.9.2005 but applicant did not attend the same on the ground that 6 months have already expired.

5. The question is whether applicant could have refused to attend the enquiry officer 6 months or whether inquiry would have come to end automatically thereafter. We are clear in our mind that order dated 23.12.2004 cannot be interpreted in this manner because the words used by Tribunal were preferably within six months from the date of receipt of the order.

6. Preferably only means desirable. It cannot be stretched to mean that inquiry could not have continued beyond 6 months as was being suggested by the counsel for applicant. Since the word used was preferably, enquiry could go beyond 6 months also therefore, it is wrong to suggest that after 6 months, enquiry would abate or court would become functus officio. The judgments relied upon by counsel are distinguishable as in those cases positive directions were given to do something within stipulated period. The word preferably was not used there. It was in those circumstances held that any action taken by respondents beyond the stipulated period would be without jurisdiction. Therefore, they are not applicable in the present case.

7. We are satisfied that the present Inquiry Officer wants to complete the inquiry, therefore, last opportunity is given to the respondents to complete the enquiry within 6 months positively. This period of 6 months would commence



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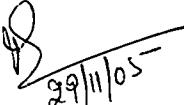
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from 21.7.2004 i.e. 6 months after the copy of order was received by them which is stated to be on 13.1.2005. The respondents should now complete the enquiry positively by 31.1.2006 provided applicant cooperates. It is made clear that if inquiry is not completed by 31.1.2006, the same shall stand as dropped.

In case applicant does not cooperate, inquiry officer shall proceed in accordance with law.

8. With the above directions, MA is disposed off.

9. In view of the order passed in MA, CP does not lie at this stage. The same is accordingly dropped with liberty to the applicant, that in case, any grievance still survives after 31.1.2006, he may seek redressal in accordance with law.


29/11/05
(Mrs. Meera Chhibber)
Member (J)


(M.P. Singh)
Vice Chairman (A)

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