

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 8TH DAY OF FEBRUARY, 2001

Original Application No.115 of 2001

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.M.P.SINGHA, MEMBER(A)

Manoj Kumar Sharma, son of Shri Bani  
Singh Sharma, R/o village Mainchaki  
Post Office Maincha, district Gaudam Budh Nagar  
Noida.

... Applicant

(By Adv: Shri S.P.Pandey)

Versus

1. Union of India, Ministry of Finance and Revenue, new Delhi through its Secretary.
2. Commissioner (Custom & Central excise) Meerut-II, B-123 Sector-5, Noida.
3. Addl.Commissioner (P & V), Central Excise Commissionerate Meerut-II, Noida.
4. Deputy Commissioner(Custom & Central Excise) Commissionerate, Meerut-II, Noida.
5. Mr.S.S.Sharma,Addl.Commissioner (P & V) Central Excise Commissionerate Meerut-II, Noida.

... Respondents

(By Adv: Shri Ratnakar Chaudhary)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of A.T.Act 1985 the applicant has challenged the order of suspension dated 13.4.1999(Annexure 1) and order dated 27.12.2000 passed by respondent no.3 rejecting appeal of the applicant. Learned counsel for the applicant has submitted that respondent no.3 passed the order of suspension dated 13.4.1999 as Deputy Commissioner Customs & Central Excise Meerut-II. Against that order applicant filed OA No.341/2000 which was disposed of

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finally on 10.8.2000. The applicant had already filed appeal against the order of suspension, hence the OA was disposed of with the following direction:

"The application is disposed of finally with a direction to the respondent no.4 (Commissioner Customs & Central Excise, Meerut) to decide the appeal of the applicant within two months from the date a copy of this order is filed before him. No order as to costs."

The appeal, however, was transferred to respondent no.3 which has been rejected by order dated 27.12.2000. Learned counsel has submitted that the Appellate order has also been passed by same officer namely Shri S.S.Sharma who had passed the suspension order. It is submitted that the Appellate order is illegal, arbitrary and violative of principles of natural justice and cannot be sustained.

Shri Ratnakar Chaudhary learned counsel appearing for the respondents 1 to 4 though submitted that the Commissioner could transfer the appeal of the applicant for being decided by Addl. Commissioner and right of the applicant is not effected by the same. However, Shri Chaudhary could not justify the conduct of respondent no.3 to decide the appeal himself though it was filed against an order passed by him as Deputy Commissioner.

We have considered the submissions of the counsel very carefully. It is very painful that a senior officer of cadre of respondent no.3 (Shri S.S.Sharma) could not observe a simple principle of law that he could not sit in appeal against the order passed by himself. We cannot believe that he could have done so without being aware. The order cannot be sustained and is liable to be quashed. There is another aspect of the matter that while deciding OA 341/2000 as mentioned above a clear direction was given

that Commissioner (Customs & Central Excise), Meerut-II shall decide the appeal. We do not find any justification on the part of the Commissioner as to how could he transfer the appeal of the applicant to Addl. Commissioner for being decided. He could have avoided such a situation in which respondent no.3 decided the appeal against the order passed by him himself.

For the reasons stated above, the order dated 27.12.2000 (Annexure 2) is quashed. The appeal of the applicant shall stand restored to its original number and shall be decided by Commissioner (Customs & Central Excise), Meerut-II by a reasoned order in accordance with law within a month from the date a copy of this order is filed before him.

We make it clear that Commissioner shall decide the appeal himself and shall not transfer it to any officer.

Certified copy of the order shall be given to the counsel for the parties within 24 hours and copy.

There will be no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: 8.2.2001

/Uv/