

RESERVED.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH; ALLAHABAD.**

ORIGINAL APPLICATION NO.1358 of 2000.

ALLAHABAD THIS THE 17th Day.....February.. 2006.

**Hon'ble Mr. D.R. Tiwari, Member-A**

Mukesh Kumar Gupta son of late Shri C.M. Gupta,  
Resident of T-134, Pallav Puram- Phase II, Meerut  
working as Superintendent Central Excise Presently  
posted at Central Excise Head Quarter, Meerut.  
.....Applicant.

(By Advocates: Sri S.K. Mishra/Sri V. Prakash)

**Versus.**

1. Union of India through  
Director General, Vigilance Customs and Central  
Excise, IInd Floor, C.R. Building I.P. Estate  
New Delhi,
2. Commissioner, Customs and Central Excise  
Commissionrate Meerut-I
3. The Director of Revenue Intelligence New Delhi.  
.....Respondents.

(By Advocate: Sri Saumitra Singh)

**ORDER**

By this O.A. filed under section 19 of the A.T.  
Act, 1985, the applicant has prayed for setting aside  
the impugned order dated 5.10.2000 (Annexure No.1) by  
which he has been placed under suspension.

2. Briefly stated, the applicant, at the relevant  
time, while working as Superintendent, Customs in  
I.C.D (Inland Container Depot) Meerut, was placed  
under suspension under Rule 10(1) of the C.C.S( C.C.A)  
Rules, 1965. Brief facts leading to his suspension, as  
per the O.A, are that he has cleared the imported  
consignment of Ball Bearing of Foreign Origin  
pertaining to Bill of Entry No.00026 dated 17.7.2000

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from I.C.D Meerut for consideration of money. This clearance, without examination, has caused loss of revenue to the Department. The alleged goods were seized from the premises of M/s Meerut Exim, Mawana Road Meerut on 18/19.7.2000 owned by Shri A.K. Jain, the importer after 24 hours from the clearance of imported consignment on 17.7.2000 (Annexure NO.2).

3. The applicant was transferred from I.C.D Meerut to Review Branch, Head Quarters Office, Commissionerate, Meerut-I on 28.7.2000. He joined the Review Branch on 31.7.2000. The Commissioner, Customs and Central Excise, Meerut-I suspended him by an order dated 5.10.2000.

4. The main grievance of the applicant is that the premises of M/s Meerut Exim, the Customs Department has no control and the seizure has been placed 24 hrs after the clearance of imported goods. The goods were neither seized from the I.C.D Meerut nor from the containers through which these goods were alleged to have been imported. He has further submitted that the department filed a criminal complaint under section 136 of Customs Act, 1962 on 16.9.2000 in the Court of Special Chief Judicial Magistrate, Meerut against the applicant and 4 others (Annexure NO.4). The applicant preferred a revision against the said complaint and obtained stay order on 20.9.2000 from the Hon'ble High Court of Allahabad (Annexure NO.5). He has alleged that placing him under suspension is illegal right from the beginning as all investigations had already been completed before 16.9.2000. In addition to these

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grounds, he has relied on various grounds mentioned in para (5) of the O.A. and some of them are mentioned below:-.

- "(a) Because the respondent NO.2 without conducting any formal departmental enquiry and fact finding enquiry passed the impugned order.
- (b) Because the impugned suspension order has been passed by respondent NO.2 without applying his mind as to what was the duty of the applicant while exercising his power as Superintendent in I.C.D, Meerut and what was his role in the examination of goods lying in the container at I.C.D Meerut, in view of the public notice NO.4 of 1998 dated 6.9.1998.
- (c) Because there is no material before the respondent NO.2 to apply its mind in the issue as to what part did the applicant play individually in the evasion of customs duty. The respondent NO.2 that is appointing/competent authority earlier transferred the applicant from I.C.D Meerut to review Branch Head Quarter, Central Excise Meerut-I and did not propose to suspend or take any other action against the applicant.
- (d) Because the respondent NO.2 has passed the impugned suspension order with malafide intention on 5.10.2000 when the prosecution of the applicant was stayed by this Hon'ble Court vide order dated 29.9.2000 when their malicious intention to harass the applicant under the provisions of deeming suspension was frustrated.
- (e) Because in the fact and circumstances of the instant case it is proved that the impugned order is not a mere a suspension order but the same amount to be a punishment to the applicant when respondent

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n0.2 could not succeed in prosecuting the applicant under section 136 Customs Act (which is subjudice before this Hon'ble Court) The impugned suspension order has been passed to harass the applicant with ulterior motive.

(f) Because when the appointing authority exercise the discretion in transferring the applicant from I.C.D. Meerut to the present post of posting and did not consider it proper to take any action against the applicant, now there is no justification for the respondent NO.2 to pass the impugned suspension order particularly when there is no material before him to pass the suspension order.

(g) Because in view of the facts and circumstances of the instant case, no departmental proceeding can be initiated against the applicant, simultaneous to the Criminal proceeding which is under challenge in criminal revision before Hon'ble High Court of Judicature at Allahabad in criminal revision No.2144 of 2000".

In view of the submission hereinbefore, it has been pleaded that O.A. deserves to be allowed.

5. The respondents, on the other hand, had filed a detailed counter affidavit to refute the claim of the applicant. It has been submitted that acting on the basis of Specific Intelligence, the Officers of the Directorate of Revenue Intelligence (H.Q) New Delhi recovered and seized Ball Bearing of Foreign origin valued at Rs.3.60 crores from the premises of M/s Doab Exim Pvt. Ltd. Village Saini, P.O. Rajpura, Meerut Mawana Road, Meerut on 18/19.7.2000. The aforesaid

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seized Ball Bearings were cleared from the Meerut I.C.D on 17.7.2000 by filing false declaration regarding description, quantity value and country of origin by the importer. It has further been submitted that after preliminary investigation four persons namely S/Sri Balbir Singh Sethi, Aswhani Kumar Jain, Pawan Kumar Gupta and Trilok Nath Mittal were arrested in this connection. These persons have been found involved in the above mis-declaration and unauthorised clearance. The investigation report discloses direct involvement of the petitioner, the then Superintendent, I.C.D. Meerut. According to the statement of the importer recorded by the officers of D.R.I., the petitioner allowed the clearance of Ball Bearings without examination of goods on monetary consideration. It is relevant to mention here that a similar consignment was earlier also allowed clearance on 5.6.2000 by the petitioner on consideration of money. Thus, the petitioner actively connived with the importers relating to the clearance of the goods which has resulted in loss of revenue and there is strong evidence both documentary and circumstantial in support of this.

6. It has been submitted that in view of the above, the Directorate of Revenue Intelligence, New Delhi decided to file prosecution complaint against all the above named four persons under section 132/135 of Customs Act, 1963 and also decided to file a complaint against the petitioner under section 136 of the Act. As required under the Rules the then Commissioner, Customs & Central Excise, Meerut granted sanctioned

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and authorization for prosecution in respect of all the above named five persons including the petitioner on 15.9.2000 and the D.R.I. filed the complaint in the Court of Special C.J.M Meerut on 16.9.2000. Thereafter according to the advise of the Directorate General of Vigilance vide letter dated 4.10.2000 the petitioner was placed under suspension vide order dated 5.10.2000 w.e.f. 5.10.2000 and since then the petitioner is under suspension.

7. During the course of argument, counsel for the applicant vehemently argued that suspension as well as its continuation is illegal and against the instruction issued by the Govt. of India. He invited my attention to para 2(c) of the instructions contained in D.G. P&T letter NO.201/43/76-DISC-II dated 15<sup>th</sup> July, 1976 which is reproduced as under:-

**"While placing an official under suspension, the competent authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence the investigation, if any in progress. If the authority finds that the purpose cannot be served by transferring the official from his post to another post then he should record reasons, therefore, before placing the official under suspension".**

He also drew my attention to OM No.35014/1/81-Estt. (A) dated the 9<sup>th</sup> November 1982 issued by the Department of Personnel and A.R. which is extracted below:-

**"Where a Government servant is placed under suspension on the ground of "contemplated" disciplinary proceeding, the existing instructions provide that every effort would be made to finalise the charges, against the Government servant within three months of the date of suspension....."**

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7. Counsel for the respondents, on the other hand, strenuously argued to refute the contentions/claims of the applicant's counsel. He mostly relied on the facts & legal pleas of the counter affidavit/suppl. Counter affidavit of respondents. He submitted that misconduct of the applicant is of grave and serious nature warranting major penalties the misconduct of the applicant has caused loss to the Department in crores. In view of facts & circumstances, the O.A. lacks merit and be dismissed.

8. I have heard very carefully the rival submissions of the counsel for the parties and given anxious consideration. I have gone through the pleadings on the records.

9. The only crucial question which falls for consideration is the validity of the impugned order. I am inclined to agree with the contention of the applicant's counsel that respondents have not been able to follow the various instructions issued by the Govt. of India as mentioned para 7 of this Judgment. In addition to non-compliance of instruction of the Govt. of India, I would like to quote amended provisions of the Rule 10 of C.C.S (C.C.A) Rules, 1965.

"10 (1), (a), (aa), (b).....

(2) (a), (b),.....

(3).....

(4).....

(5), (a) (b) (c).....

(6) **An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is**

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competent to modify or revoke the suspension, before expiry of 90 days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding 180 days at a time.

- (7) Notwithstanding anything contained in Sub-Rule 7(a), an order of suspension made or deemed to have been made under sub rule (1) of (2) of this Rule shall not be valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days".

10. As can be seen from above as per the insertion of sub rule (6) an order of suspension shall be reviewed by the authority who is competent to modify to revoke the suspension before the expiry of 90 days from the date of suspension and the extension of suspension shall not be for a period exceeding 180 days at a time. However, sub rule (7) above states that the order of suspension made or deemed to have been made shall not be valid after a period of 90 days unless it is extended after review for a further period before the expiry of 90 days.

11. From what has been stated above, it is undisputed that the applicant was suspended on 5.10.2000 and his case was first reviewed and communicated to him on 7.6.2004 by the Commissioner (Customs), Meerut vide its order NO. C. No.11(8)-25 Vig./2000/294 dated 7.6.2004 extending the period of suspension till further orders. In the instant case, the respondents had not only not followed the instructions of the Govt. of India but had also violated the statutory provisions contained in para 6 and 7 of the Rule 10 *ibid*. In my considered opinion,

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no purpose is being served by keeping the applicant under suspension when all investigations were completed on 15.9.2000. I get support for my view from the judgment of the Principal Bench in the case of Ashok Kumar Aggarwal Vs. Union of India- O.A No. 783/2000 dated 17.3.2003 and para 7 thereof is reproduced below:-

**"While suspending or continuing suspension of an official the authorities have to exercise their discretion with care and caution and it has to be kept in view by them as to what purpose would be achieved by continuing with suspension. In the present case, when by the reinstatement of the applicant there is no likelihood of tempering of any evidence or witnesses during the criminal trial, there should be no reason for continuance of the suspension of the applicant".**

Respondents having failed to review the applicant's case for suspension within stipulated period as provided in Rule 10 ibid, suspension is liable to be revoked.

12. In view of the facts and circumstances mentioned above and the discussion made, the O.A. succeeds on merit and is allowed. The impugned order dated 5.10.2000 (Annexure No.1) is quashed and set aside and the suspension is hereby revoked. Nothing stated hereinbefore shall be taken as expression of opinion on the seriousness of the charges. The entire exercise in this connection may be completed within a period of four weeks.

No order as to costs.

  
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