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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. No. 41 OF 1989.
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DATE OF DECISION 22-3-1990.

MR. B.C. FALNIKAR Petitioner

MR. D.M. THAKKAR Advocate for the Petitioner(s)

Versus

UNION OF INDIA Respondent

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.S. NAIR, VICE CHAIRMAN

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Mr. B.C. Falnikar,
Superintendent (Technical),
Office of the Assistant Collector of
Central Excise, Div.No.III,
Opp. Gandhibaug,
Chowk Bazar,
Surat.

.... Petitioner.

(Advocate: Mr. D.M. Thakkar)

Versus.

Union of India,
Ministry of Finance,
Govt. of India,
Department of Revenue,
New Delhi.

.... Respondent.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A. NO. 41 OF 1989.

Date: 22-3-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant, a Superintendent in the Central Excise, has filed this application challenging the order No. F.No.II/10(A)(CON)13/86/Vadodara, dated 31.7.1987 by which the Collector, Central Excise & Customs, Vadodara, awarded the penalty of Censure to the applicant and order No. 26/88 dated 27.9.1988 by the Government of India by which the applicant's appeal against this order stood dismissed.

2. The memorandum of charges under Rule 16 of CCS(CCA) Rules 1965 alleges that the applicant committed gross negligence in conducting a survey the Assistant Collector, Div - III Vadodara had directed the applicant to conduct. The statement of imputation of misconduct in support of the articles of charge states that the applicant was specifically directed to conduct the survey to find out the unlicensed units if any and bring them within the Central Excise net and that any

lapse in conducting the survey shall be viewed seriously. The applicant conducted the survey at the premises of M/s. Sarabhai M. Chemicals and gave a report of "no irregularity" whereas the officers of Preventive, Headquarters, Baroda, during their checks carried out at the premises of this firm, noticed that the firm had manufactured glucose in liquid form during the financial year 1984-85 without obtaining any Central Excise license, without following Central Excise procedure and had cleared the same without payment of Central Excise duty leviable thereon.

3. The two impugned orders have been challenged on several grounds including that the charge framed against the applicant was absolutely fictitious; that the applicant had submitted his survey report to the Assistant Collector who found no fault with the report; that the firm manufactured "starch hydrolysate" which did not merit the classification "Dextrose"; that the Headquarter Preventive unit had booked the firm by acting on information; that the firm was accused by the Department of suppression of information of manufacture of the item from January, 1982 onwards and excise was levied accordingly; that the firm took the matter in appeal to the Customs, Excise, Gold (Control) Appellate Tribunal which upset the order of the Department and set aside the order of levy of excise holding that starch hydrolysate" is not and never was, a marketable commodity, and hence, would not be goods on which excise duty should be charged"; and that the applicant had taken the plea, at the initial stage as also in appeal against the final order, that the charge framed against him was, without awaiting the result of the firm's appeal to the C.E.G. Appellate Tribunal, premature but the plea was ignored.

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4. The relevant facts of the case are not in dispute. Directed by the Assistant Collector of Central Excise Division III, Baroda, under his letter dated 29.1.1985, the applicant submitted the report of survey on 15.2.1985. However, the Central Excise, Headquarter (Preventive) Party which visited the premises on 20.2.1985 found the firm indulging in the alleged violation and booked a case against the firm. This also gave rise to fixing of responsibility on the applicant for his failing to do, as part of his duty to survey, what the Headquarter Preventive Party could do less than one week after. The occasion and grounds for launching the disciplinary proceedings against the applicant thus arise from the juxtaposition of the outcomes of the survey the applicant conducted and the special checks the Headquarter Preventive Party undertook less than one week after.

5. We are conscious that this Tribunal can interfere with the findings of an inquiry officer, a disciplinary authority or an appellate authority only when the same are arbitrary or utterly perverse or the principles of natural justice have been infringed. No infringement of principles of natural justice has been alleged and the findings even in the juxtaposition of undisputed facts referred to earlier, do not suffer from arbitrariness or utter perversity. The applicant's defence that the Excise Deptt order on the liability of the firm for violation of excise laws and its liability to pay excise duty having been upset in the firm's appeal to C.E.G. Appellate Tribunal completely negatived any disciplinary punishment of the applicant could have been an acceptable defence if the applicant was discharging the duty of assessing the firm and the

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charge was on account of his failure to assess the firm properly and correctly. This defence cannot be of avail to the applicant when the charge is of negligence in survey. The applicant would be duty bound to conduct a thorough survey and submit an equally thorough report for the concerned authorities to take due action on it. A view that the applicant either omitted from the report the mention that the firm was manufacturing starch hydrolysate or, in the alternative, the survey lacked thoroughness, is not unreasonable in the circumstances. Whether liquid hydrolysate merited the classification of Dextrose and therefore liable to excise duty and whether the firm had indulged in a tax avoidance project would have been for the concerned authorities to unravel on the basis of the applicant's report. When mention is also not made in the report that the firm was manufacturing liquid hydrolysate, the Department suitably punishing the applicant without infringing principles of natural justice can neither be justifiably accused of arbitrariness nor of utter perversity as else artifices facilitating tax avoidance may arise from within the Department.

6. Thus viewed, we dismiss the application without any order as to costs.

M. M. Singh.
27/8/20
(M.M. SINGH)
ADMINISTRATIVE MEMBER.

G.S. Nair
22.3.1990
(G.S. NAIR)
VICE CHAIRMAN