CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.494/05

Monday, this the 27th day of June, 2005.

CORAM :

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.A.Nayar
Appraiser
Customs House, Cochin – 682 009
Residing at raghavanparambil Madhom
Theriak Lane
Sanskrit College Road
Tripunithura – 682 301   : Applicant

      (By Advocate Mr.N.N.Sugunapalan)

      Versus

1.   The Commissioner of Customs
       Customs House, Cochin – 682 009

2.   The Under Secretary, Cus.Ad.V
       Government of India
       Ministry of Finance, Department of Revenue
       Central Board of Excise & Customs
       New Delhi – 110 001

3.   The Central Board of Excise and Customs
       North Block, Parliament Street
       Sansad Marg, New Delhi – 110 001
       Represented by its Chairman

4.   President of India & Appellate Authority
       Rashtrapathy Bhawan,
       New Delhi   : Respondents

      (By Advocate Mr.T.P.M.Ibrahim Khan, SCGSC)

       The application having been heard on 27.06.2005, the Tribunal on the same day delivered the following :

O R D E R

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN

The applicant who was an Appraiser in the Customs Department was involved in a confiscation of smuggled silver worth Rs. 5.8 crores. He was charge sheeted and imposed a penalty of reduction to the lowest pay scale vide order dated 10.05.2000. The applicant preferred an appeal to the 4th respondent. In the meanwhile he had already undergone punishment. The Appellate Authority vide Annexure A-8 dated 20.12.2001 issued show cause notice informing him that under Section 27 (2) of CCS (CCA) Rules, it is proposed to enhance the penalty imposed.

2.   However, the proposed penalty was not indicated in the show cause notice. The applicant replied to the show cause notice vide Annexure A-10 dated 20.02.2004. Even as the proceedings are still pending, the applicant apprehends that termination order may be issued at any time. Therefore, he is constrained to approach this Tribunal.

3.   We have heard the learned counsel for the applicant. He has brought to our notice Rule 27 Sub – rule 2 (iii) of CCS (CCA) Rules. According to which the Appellate Authority has to give reasonable opportunity to make a representation on the proposed penalty to be imposed. The applicant had approached this Tribunal in OA 208/2002, in which a direction was given to furnish all necessary documents. But the documents were supplied only 10.02.2004 vide Annexure A-9.

4.   It is seen from the records that disciplinary authority passed the orders in the year 2000. The applicant has also undergone punishment. Though a show cause notice was issued under Rule 27 (2) of the CCS (CCA) Rules in the year 2001, till today no decision has been taken by the Appellate authority. According to rules, any appeal filed has to be disposed

..3/-

of within a period of six months. There is thus inordinate delay in considering the appeal of the applicant. The second contention is that the show cause notice has been issued without reference to the provisions of the Sub Rule 2 of Rule 27 without indicating the proposed penalty. We certainly find this contention, as very valid and also the protracted nature of the proceedings.
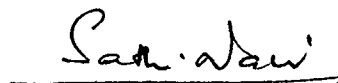
5.   However, at this stage, since the entire matter is still pending before the Appellate Authority, we limit our directions to the 4th respondent to consider and dispose of the appeal and the show cause notice dated 20.12.2001 in the light of the reply given by the applicant and also keeping in view the averments urged by him in the Original Application. For this purpose, we direct that copies of the OA may also be furnished by the applicant to the 4th respondent and on receipt of such documents, the 4th respondent or whoever is the competent authority on his behalf may dispose of the same with a speaking order within a period of two months from the date of receipt of a copy of this order. We direct that till then no action be taken against the applicant.

6.   With the above directions, the Original Application is disposed of. No order as to costs.

Dated, the 27th June, 2005

K.V.SACHIDANANDAN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

vs