

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 286/98

Monday this the 18th day of December, 2000.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.K.Purushothama Kaimal
S/o Late P.G.Kesava Kaimal
Preventive Officer
Customs House
Cochin-9
Residing at Quarter No.3
North End, Customs Quarters
Wellington Island, Cochin.

Applicant.

By advocate Mr.M.R.Rajendran Nair

Versus

1. Union of India represented by
Secretary to Government of India
Ministry of Finance
New Delhi.
2. The Commissioner of Customs
Customs House
Kochi.
3. Chief Vigilance Officer
Government of India
Ministry of Finance
New Delhi.

Respondents.

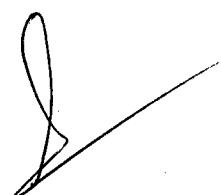
By advocate Mr.Govind K.Bharathan, SCGSC

The application having been heard on 18th December, 2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A4 and A11 and to direct the respondents to restore the monetary benefits if any denied to him by A4 and A11 orders.



2. Applicant is a Preventive Officer in the Customs House, Cochin. Disciplinary proceedings were initiated against him by issuing charge memo dated 28.5.93 alleging that while functioning as Preventive Officer in unaccompanied Baggage Unit on 29.6.90 he being authorised by A.C. D'Silva, Superintendent of Customs (Preventive) for examination of baggage declaration numbers 4652, 4654 and 4656 all dated 28.6.90 without opening those baggages scribbled few items as contents as suggested by the consignees who were familiar with Customs Officers and put Rs.24,841/- as customs duty at the rate of 255% without properly valuing those items and falsely certified that the baggage was opened and examined. As per A2 order of the Disciplinary Authority, he was awarded the penalty of reduction to a lower stage in the time scale of pay for a specified period. Aggrieved by A2, he preferred an appeal. That appeal was disposed of with a direction to hold a de novo enquiry from the stage of examination of defence witnesses. A fresh enquiry was conducted. Thereafter the Disciplinary Authority passed A4 order. Against A4, an appeal was preferred. A11 is the order of the Appellate Authority. The punishment awarded as per A4 was confirmed as per A11.

3. Respondents say that the enquiring authority in the disciplinary proceedings against the applicant observed that the inventory taken by the applicant did not give any indication of the valuable items in the baggages. The enquiry conducted against the applicant shows that he did not exhibit the proper devotion to duty expected from an officer who is attending the duties related to the collection of customs



revenue in the unaccompanied Baggage Unit. Applicant being the Preventive Officer posted in unaccompanied Baggage Unit is required to examine the goods contained in the Baggage Declaration and fix the value for each items for assessing the customs duty. He was not expected to fix the value at ridiculously low level on the expectation that his superior officer would correct the value. He was charge-sheeted for his failure for non-examination of the goods properly. The Department would have suffered a huge loss but for the timely detection of the lapse on his part.

4. Though various grounds are raised in the Original Application, the only ground pressed into service is that this is a case of no evidence.

5. No evidence means not total want of evidence but with the available evidence whether the conclusion that was arrived at could be reached.

6. It is enough in matters like this if there is some evidence.

7. A3 is the report of the Enquiry Officer. In A3 the Enquiry Officer has stated that the charge against the charged officer for not taking proper inventory of the goods is sustainable. It is also stated there that the charge of under valuing the goods against the charged officer is sustainable to the extent that he did not perform his duty entrusted by the Superintendent. The finding as per A3 is that the manner in

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which the charged officer inventorised the goods and valued it shows that he did not exhibit the proper devotion to duty expected from an officer who is attending the duties related to the collection of customs revenue in the unaccompanied baggage unit.

8. Learned counsel appearing for the applicant vehemently argued that there was no duty cast upon the applicant to assess the value of the goods contained in the unaccompanied baggage and the duty of the applicant was confined to take inventory of the goods and to suggest the value. Even if that was so, the suggestion of the value cannot be according to the whims and fancies of the applicant but according to the prescribed norms. It cannot be a case where the Preventive Officers like the applicant are given unlimited powers to suggest the value of the goods in the unaccompanied baggage as they feel like. They have to follow certain norms and accordingly they have to suggest.

9. It is the admitted case of the applicant that the value assessed by other officers in respect of the goods contained in the unaccompanied baggage intended to be examined by the applicant amounted to more than 10 times of the value suggested by the applicant. In the ordinary course such a situation cannot arise.

10. We have gone through A3 and the impugned orders A4 and A11. On a meticulous examination A3 and A4, we are unable to

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agree with the applicant that it is a case of no evidence. We are not to sit in appeal and to re-appreciate the evidence. We are more concerned with the decision making process than the decision itself. In that process, we do not find that it is a case of no evidence.

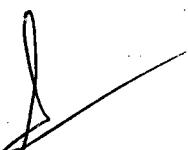
11. Learned counsel appearing for the applicant submitted that the consignee had cleared the goods after paying the duty under protest and, therefore, the matter has become conclusive. It is the admitted case of the respondents that the consignee has cleared the goods imported after payment of duty under protest. In this context it is relevant to see para 14 of A2 wherein it is stated that misdeclaration of the items and under valuation reached finality under Customs Act, 1962 after clearance of the goods by the affected parties on payment of fine and penalty. In the OA there no attack against this portion of A2.

12. Learned counsel appearing for the applicant relying on para 12 of the reply statement submitted that the applicant was appointed as proper officer of Customs under Section 17 (1) of the Customs Act, 1962, that Section 17(1) is in respect of assessment of duty after the importer has entered any imported goods under Section 46, that Section 46 is contained in Chapter VII and that Section 44 which is the beginning section of chapter VII says that the provisions of chapter VII shall not apply to baggage and goods imported or to be exported by post. According to the learned counsel of the applicant, the baggage includes unaccompanied baggage, that in this case what was



examined by the applicant was unaccompanied baggage and, therefore, Section 46 has no applicability and by virtue of appointing the applicant as proper officer under Section 17 (1), the applicant will not be getting the power or authority to examine the unaccompanied baggage. If that is the stand it is not known under what duty and under what obligation the applicant admittedly opened the baggage in question, inventorised and suggested the value. If the stand of the applicant is that he had no right and authority to examine the unaccompanied baggage in question he should not have touched the baggage and should have left it in tact. That has not been done. There is no such case put forth at any point of time by the applicant that he was not authorised or empowered to examine the baggage in question. This is an argument raised on the contention raised by the respondents in the reply statement. It is practically a new plea raised by the applicant and not covered by his pleadings. A plea which is not raised cannot be entertained.

13. Absolutely no argument was advanced by the learned Senior Central Government Standing Counsel on behalf of the respondents.

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14. Since we do not find any ground to hold that it is a case of no evidence as that is the ground pressed into service by the applicant, this OA is only to be dismissed. Accordingly the Original Application is dismissed.

Dated 18th December, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A4 True copy of the order No. Dis-1/92-Cus dated 7.1.97 issued by the 2nd respondent to the applicant.
- A11 True copy of the order No. F. No. C-16018/16/97-Ad. V dated 2.12.97 issued by the 3rd respondent to the applicant.
- A2 True copy of the order No. Dis/1/92-Cus. dated 23.8.94 issued by the 2nd respondent to the applicant.
- A3 True copy of the enquiry report dated 12.7.96 issued by the Inquiry Officer, office of the 2nd respondent.