

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.414/2007

Monday this the 29 th day of October, 2007.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

K.G.Luke,
Inspector of Central Excise,
Central Excise Divisional office,
Trivandrum, residing at Flat No. 23,
AJ Residency, Bakery Junction,
Trivandrum. Applicant

(By Advocate Shri M.R.Hariraj)

Vs.

1. Union of India, represented by
the Secretary to Government of India,
Department of Revenue,
Ministry of Finance, New Delhi.
2. Superintendent of Central Excise,
Kundara Range 1,
Kundara, Kollam District, Kerala.
3. Deputy Commissioner, Central Excise,
Customs and Service Tax,
Kollam Division, Kollam.
4. Joint Commissioner (P&V),
Office of the Commissioner of Central
Excise and Customs,
ICE Bhavan, Press Club Road,
Thiruvananthapuram.
5. Commissioner of Central Excise and Customs,
CR Buildings, IS Press Road, Kochi 682 018.
6. Prabhakaran K., Anitha Bhavan, Nellikode,
Vadasserkonam P.O.,
Varkkala, Trivandrum. Respondents

By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 29.10.2007,
the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Briefly stated, the applicant was communicated certain adverse remarks vide order dated 29.6.06 against which a representation was filed by the applicant which came to be rejected, ultimately, by order dated 6.11.06 vide Annexure A-

3. The applicant, vide Annexure A-19 preferred an Appeal before the Commissioner of Central Excise on 24.4.07. The Joint commissioner vide Annexure A-4 order dated 6.6.078 rejected the same stating that, as per the existing instructions contained in DOPT's O.M. Dated 30.1.1978, only one representation is to be allowed against adverse remarks. The applicant has in ground 'G' stated that, as per the aforesaid order of DOPT "No memorial or appeal against rejection of representation should be allowed six months after such rejection" (Emphasis supplied).

2. Counsel for the applicant submits that Annexure A-4 is bad in law on two grounds:

- a) When the appeal has been preferred before the Commissioner of Central Excise, the same should have been considered only by that authority and not by the Joint Commissioner.
- b) According to order dated 30.1.1978, the bar is related to representation beyond six months of rejection and not earlier, and in the instant case, the applicant has preferred an appeal within six months after rejection.

3. The contention of counsel has full merits. The bar does not apply to representation filed within six months. In view of the above, the O.A. is disposed with a direction to the 5th respondent to consider A-19 Appeal dated 24.4.07 and to take a decision on the same within a period of two months from the date of

receipt of a copy of this order.

4. No costs.

Dated the 29 th October, 2007.



**Dr.KBS RAJAN
JUDICIAL MEMBER**

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