

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE ..O.A.390...OF....1988.....

NAME OF THE PARTIES..Mohd. Abdul Hamid.....

.....Applicant

Versus

.....Union.....of.....Mehiq.....Respondent

Part A, ~~E~~

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated...30/12/2011

Counter Signed.....

Signature
Section Officer / In chargeSignature of the
Dealing Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT NEW DELHI *Allo.**Cca*

INDEX SHEET

CIT NO 390/88

CAT/J/10

A1

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CAUSE TITLE..... 4 (U) OF 1982.8

NAMES OF THE PARTIES..... *Mahmed Abdul hamid*

VERSUS

C. O. 3

PART A B & C

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*(A + B file only)*Note! - Certificates of the Index has not been countersigned by
*S.C.**Renewed (* 21.1.89 *S.O. (P.R.)**Mahmed**21.1.89*

CONTINUED INDEX SHEET

SERIAL
NO.

DESCRIPTION OF DOCUMENTS

PAGE

CENTRAL ADMINISTRATIVE TRIBUNAL, DE LHI

A
1
2

Application No.

Old Write Pet. No.

Transfer application No.

CERTIFICATE

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided). (1)

Room (Decided).

Dated: 18-06-19

Countersigned.

Section Officer/Court Officer.

MGIPRRND-17 CAT/86-T. S. App. -30-10-1986-150 Pads.

Signature of the Dealing Assistant.

Assistant.

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T

Sl. No. of order	Date of order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
	6.7.88	<p>Hon. D. S. Misra, AM Hon. G. S. Sharma, JM</p> <p>There is no present for applicant. Bring holder of file. A. K. Gaur is present.</p> <p>The case is adjourned to 3.10.1988 to hear.</p> <p>JM 6.7.88 Lucky.</p> <p>AM</p>	
	6.7.88	<p>Hon. D. S. Misra, AM Hon. G. S. Sharma, JM</p> <p>Sri A. K. Tewari for the applicant Sri K. C. Joshi for the respondents</p> <p>Arguments of the applicants was held on 4.7.88. Sri K. C. Joshi for the respondents closed and closed his arguments today.</p> <p>Judgment is reserved.</p> <p>JM</p>	
	7.88	<p>Judgment has been signed and served. Judgment + 2 copies + seal on set file. New</p>	<p>15/7/88</p>

(5)

Order Sheet

A 2
2

Dt. 22.3.88

Hon. S. Zakeer Hasan VC (J)
Hon. D. S. Misra - Member (A)

Put up this case for
admission on 28th March,
1988. at Allahabad Bench II

✓

✓

ATY

VC (J)

22/3

28.3.88

Hon. D. S. Misra, Am
Hon. C. S. Sharma, JY

Arguments heard. Orders will be
passed later on.

✓

Am

JY

28.3.88

lewy

29.3.88

Hon. D. S. Misra, Am
Hon. C. S. Sharma, JY

Petition has been admitted. For
detailed order, see back side of the
petition.

✓

Am

JY

28.3.88

lewy

Inspected by Applicant
Moto. Abdil Hameed
on 31/3/88. Application is
attached alongwith file.

Mahendra
S. O. (R) 315

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CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,
Ganguly Bhawan, Lucknow
23-A, Thornhill Road, Allahabad-211001

Registration No. of 198

APPLICANT (s) Mohd. Abdul Hameed

RESPONDENT(s) K. P. S. + others

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	yes
2. (a) Is the application in the prescribed form ?	yes
(b) Is the application in paper book form ?	yes
(c) Have six complete sets of the application been filed ?	
3. (a) Is the appeal in time ?	yes
(b) If not, by how many days it is beyond time ?	
(c) Has sufficient cause for not making the application in time, been filed ?	
4. Has the document of authorisation/Vakalat-nama been filed ?	yes
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-	yes
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	yes NO (or by photocopy not attested of any authority)
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	yes
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	yes

Particulars to be ExaminedEndorsement as to result of Examination

(c) Are the documents referred to in (a) above neatly typed in double space ? *yes*

8. Has the index of documents been filed and paging done properly ? *yes*

9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?

10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ? *No*

11. Are the application/duplicate copy/spare copies signed ? *yes*

12. Are extra copies of the application with Annexures filed ? *yes*

(a) Identical with the original ?

(b) Defective ?

(c) Wanting in Annexures

Nos...../Pages Nos..... ?

13. Have file size envelopes bearing full addresses, of the respondents been filed ? *No*

14. Are the given addresses, the registered addresses ? *yes*

15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *No*

17. Are the facts of the case mentioned in item No. 6 of the application ? *yes*

(a) Concise ?

(b) Under distinct heads ? *No*

(c) Numbered consecutively ?

(d) Typed in double space on one side of the paper ? *yes*

18. Have the particulars for interim order prayed for indicated with reasons ?

19. Whether all the remedies have been exhausted.

*the Petition is being filed against
let the case be listed before Suble Bench
22.3.88*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

O.A. No. 390 1988
T.A. No.

DATE OF DECISION 12.7.88

Mohd. Abdul Hameed

Petitioner

Sri A.K. Tewari

Advocate for the Petitioner(s)

Versus

VOL 8 2 others

Respondent

Sri K.C. Sinha

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.S. Miya, AM

The Hon'ble Mr. G.S. Sharma, J.M.

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- 2. To be referred to the Reporter or not ?
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- 4. Whether to be circulated to other Benches ?

Dinesh/

A3
T

Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.390 of 1988

Mohd. Abdul Hameed ... Applicant

Vs.

Union of India and 2 others... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This is an application u/s.19 of the Administrative Tribunals Act XIII of 1985 for quashing the suspension order dated 11.8.1987 passed by the President of India placing the applicant under suspension. The applicant while posted as Asstt. Collector Central Excise Lucknow was transferred to Allahabad in the same capacity under order dated 7.8.1987 of the Collector Central Excise respondent no.3. Four days thereafter, he was placed under suspension under the impugned order in contemplation of certain disciplinary proceedings against him. The applicant continued to be under suspension till he filed this petition on 22.3.1988 without exhausting departmental remedy of appeal under rule 23(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. He had also claimed an interim relief for revoking his suspension. This Bench admitted the petition on 29.3.1988 exempting the applicant from taking recourse to the departmental remedy on the ground that a period of about 7 months had already elapsed in the meantime and the applicant had ^{to} ~~retired~~ on July 31, 1988 on reaching the age of superannuation. The prayer for interim

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relief was, however, not acceded to.

2. The applicant afterwards moved another application on 9.5.1988 for granting the same interim relief and when the petition was listed on 4.7.1988 for the consideration of the interim matter, a request was made on behalf of the applicant to dispose of the petition finally and a short time was allowed to the respondents to file their reply so that the case may be disposed of finally before the end of the current month. The respondents however could not file any reply but we heard the arguments in this case and in this way the case was concluded without any reply received from the respondents.

3. The applicant has placed before us the copies of judgments in O.A.No.734 of 1987 Kishan Chand Agnihotri Vs. Union of India and O.A.No. 733 of 1987 Nighad Khan Lodi Vs. Union of India delivered by this Bench on 24.3.1988 and 2.6.1988 respectively. Placing reliance on the various administrative memorandams issued by the Government of India, it was held in the above cases that when a Governement servant is placed under suspension without serving the charge sheet in contemplation of disciplinary proceedings, the preliminary inquiry should be completed and the charge sheet served ordinarily within a period of 6 months and on that principle we had revoked the suspension orders in those cases without entering into the merits of the cases. Till this date, no charge sheet has been served on the applicant

by the respondents despite placing him under suspension little less than one year before i.e. on 11.7.1987. Applying the same principle, we, therefore, inclined to ~~the extent of~~ the benefit of the ratio of the said cases to the applicant in the instant case as well.

4. It was contended on behalf of the applicant that as the respondents did not file any reply and his contention regarding his innocence and want of absence of any ground for placing him under suspension remained ~~unrefuted~~ ~~unabated~~, this Tribunal should further order in his case that he should get his full pay ^{for} ~~during~~ the period of his suspension. We have carefully considered this contention of the applicant but find ourselves unable to agree with the same. We are deciding his case expeditiously ~~early~~ only because he has to retire only a few days after, without entering into the merits of his case. Annexure 4 filed by the applicant is the copy of the FIR dated 13.8.1987 registered by the Superintendent of Police CAL/SPL Lucknow under sections 120B/161/165-A IPC and 5(2) and 5(1)(d) of the Prevention of Corruption Act. This FIR was lodged in respect of his official conduct and lapses and nothing has been brought to our notice that the Police has submitted a final report in the case after investigation and no case against the applicant has been made out for his prosecution. The applicant has further placed the copy of the order dated 20.6.1988 of the Collector of Customs and Central ~~(Appeals)~~ rejecting the appeal against the order of adjudication, in respect of which disciplinary proceedings are stated to have been contemplated. In

A3
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.4.

the absence of the connecting material we are not in a position to uphold the contention that the only basis of the suspension of the applicant was the order of adjudication upheld in appeal and as such, at this stage, we are not in a position to hold that the suspension of the applicant was illegal and void ab initio. We simply hold that the continuance of the suspension of the applicant is not necessary on account of the inordinate delay made by the respondents in finalising the charge sheet against him. Regarding his pay and allowances for the period of suspension, the proper order can be passed only when the competent authority takes the decision not to charge sheet the applicant at all or ~~after the charge sheet is so fixed and~~ the disciplinary proceedings initiated against the applicant are concluded in case the charge sheet is served on him by the respondents and we will not like to pass any order in this connection at this stage.

5. The petition is accordingly allowed and the impugned order of suspension of the applicant is revoked w.e.f. the date he reports on duty. There will be no order as to costs.

Subrahmanya
MEMBER(J)

Dated: July 12, 1988
kkb

Phora
12/7/88
MEMBER

PAPER BOOK.

IN THE MATTER OF.

(PAPER BOOK)

Mohd. A. Hamid.

— - - - - Applicant

vs.

Union of India

— - - - - Respondent

AU
1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
LUCKNOW CIRCUIT, LUCKNOW

MOHD. ABDUL HAMID ... APPLICANT
VS.
UNION OF INDIA & OTHERS ... RESPONDENTS

I N D E X

SL NO	DESCRIPTION OF DOCUMENTS RELIED UPON	PAGENO.
1.	Application	1 to 13
2.	ANNEXURE A-1 : Adjudication order passed by the applicant dated 31st July, 1987	14 to 25
3.	ANNEXURE A-2 : Transfer order of the applicant dt. 31st 7th August, 1987	26 to 27
4.	ANNEXURE A-3 : Impugned order of suspension dated 11th August, 1987	28 to 29
5.	ANNEXURE A-4 : First Information Report dated 13th August, 1987	30-33

6.

Vakalatnama -- 39

DATE OF FILING

16/7/87
(MOHD. ABDUL HAMID)

REGISTRATION NO.

16/7/87
(REGISTRAR)

AY
2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
LUCKNOW CIRCUIT, LUCKNOW

BETWEEN

Mohd. Abdul Hamid,
son of Mohd. Abdul Rashid,
Aged about 57 years and 8 months,
Assistant Collector, Central Excise,
38, Mahatma Gandhi Marg, Allahabad .. APPLICANT
r/o S-II-4, LDA Colony, Kanpur Road, Lucknow

AND

1. Union of India,
through Secretary, Finance,
Ministry of Finance,
Government of India,
North Block, New Delhi.
2. Chairman,
Central Board of Excise and Customs,
North Block, New Delhi.
3. Collector,
Central Excise Collectorate,
38, Mahatma Gandhi Marg, Allahabad

.. RESPONDENTS

2. Particulars of the respondent

1. Particular of the applicant:
 - (i) Name of the applicant
 - (ii) Name of Father
 - (iii) Age of the applicant -as above-
 - (iv) Designation and particular of office in which employed
 - (v) Office address
 - (vi) Address for service of notices

3. Particulars of the respondent

2. Particulars of the respondent:

- (i) Name of the respondents
- (ii) Name of father
- (iii) Age of the respondent -as above-
- (iv) Designation of particulars of office in which employed
- (v) Office address
- (vi) Address for service of notice

3. The application is against the following order:

Ad. II

(i) Order No. F NO.C 14012/6,87/ (ANNEXURE A-3)

(ii) Date : 11th August, 1987

(iii) Passed by: *by orders and in the name of President*

(iv) Subject in brief: **SUSPENSION ORDER**
as indicated below.

4. The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

5. The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

BRIEF FACTS.

6. That the applicant was initially appointed in the year 1949 as Inspector, Central Excise in the department of Central Excise and on account of his excellent services and unblemished record, the applicant has been promoted from time to time and the applicant on account of his outstanding services was posted in various capacities and the applicant was also posted for about 10 years in Vigilence Branch.

7. That in January, 1985 the applicant was promoted/elevated from the post of Senior Superintendent Vigilence to the post of Assistant Collector, Central Excise, Lucknow, which is a very sensitive post. The promotion was made considering the past services of the applicant.

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8. That the applicant has also been issued appreciation and recommendation letters from time to time by different authorities.

9. That in this regard it would also be relevant to state here that while posted as Assistant Collector, Central Excise, Lucknow, the applicant was one of those few officers who achieved revenue target fixed by the Board and the applicant also not only achieved the target, but exceeded the target by Rs. 1.44 crores with respect to realisation and recovery of excise revenue. The applicant was also issued appreciation letter in April, 1987 from the Board of Customs and Excise.

10. That when the applicant was posted in January, 1985 as Assistant Collector, Central Excise at Lucknow, there was a great pendency of different kinds of work and specially the matters of approval of price lists and adjudication cases etc. and the applicant was pressurised from time to time by superior officers to clarify the pendency.

11. That on account of applicant's hard and sincere work as Assistant Collector, Central Excise, pendency of previous years was reduced to a great extent and many of the old complicated matters were sorted out on account of the determined initiative of the applicant.

[Handwritten signature]

12. That while processing various matters relating to the pendency of official work, the applicant noticed that matters of M/s. Modi Carpets, Rai Bareli pertaining to approval of price list of the years 1980 to 1982 were pending in which a show cause notice for the modification of the price list was issued by the predecessor of the applicant to M/s. Modi Carpets, Rai Bareli.

13. That with respect to the above referred approval of the price list, the applicant was issued reminders from time to time to decide the matter at the earliest possible. The applicant processed the matter in capacity as competent authority for the approval of the price list and also gave opportunity of personal hearing to M/s. Modi Carpets, Rai Bareli and finally passed adjudication order, show cause notice of which was issued by his predecessor. A true copy of the adjudication order passed by the applicant dated 31st July, 1987 is annexed as ANNEXURE NO. A-1 to this petition.

14. That in this regard it would also be relevant to state here that the above referred adjudication order is an appealable order and ultimately against order passed by the applicant dated 31st July, 1987 an appeal was also preferred by the department before the Collector (Appeals), New Delhi, which is still pending and in which no interim orders have so far been passed.

bis

15. That certain officers in the department were not happy with the applicant on account of applicant's posting at Lucknow and they were putting all kind of pressure and resistant to get the applicant ousted from the office as Assistant Collector, Lucknow and it seems these persons persuaded the higher officers of the department and also mis-represented the facts against the applicant due to which the applicant was transferred to Allahabad although less than a year was left in the retirement of the applicant as the applicant would have reached his age of superannuation on 31st July, 1988 and normally as per various Government Orders officers are not to be transferred when they are close to age of superannuation. A true copy of the above referred transfer order dated 7th August, 1987 is annexed as ANNEXURE NO A-2 to this petition.

16. That the applicant has reliably learnt that not feeling satisfied with the transfer order of the applicant grave manoeuvrings were made and on the adjudication order dated 31st July, 1987 facts were mis-represented against the applicant due to which the applicant was placed under suspension by office order dated 11th August, 1987, a true copy of which is annexed as ANNEXURE NO. A-3 to this petition

17. That although the said suspension order

provides that the suspension of the applicant was made in contemplation of disciplinary proceedings, but in spite of the lapse of more than seven months no charge sheet whatsoever has been issued against the applicant nor any departmental or disciplinary proceedings have so far been initiated against the applicant and the applicant is being harassed unnecessarily and specially in view of the fact that the applicant would reach age of superannuation in about four months.

18. That in this regard it would also be relevant to state here that the applicant has also not been communicated even the grounds of suspension and merely by the bald order saying that departmental proceedings are contemplated, the ~~petititio~~ applicant has been placed under suspension in absolutely arbitrary and mala fide manner.

19. That in this regard it would also be pertinent to mention here that although no disciplinary proceedings whatsoever have been initiated by the department against the applicant, a fictitious and frivolous First Information Report has also been lodged by the Delhi Special Police Establishment, Lucknow Branch on 13th August, 1987. The subject matter of the First Information Report also relates to the adjudication order passed by the applicant dated 31st July, 1987 approving the price list of M/s. Modi Carpets, Rai Bareli. A true copy of the above referred First Information

Report dated 13th August, 1987 is annexed as
ANNEXURE NO. A-4 to this petition

20. That a perusal of the above referred First Information Report indicates that no name has been disclosed as to who is the complainant in the First Information Report and false and frivolous allegations have been levelled against the applicant.

21. That in the First Information Report, although clear and categorical allegations have been made, but in spite of the lapse of about seven months, nothing has been done except in the grab of this First Information Report the applicant was harassed and his house was searched in absolutely arbitrary and illegal manner but nothing incriminating was found from the possession of the applicant, which itself belies the allegations of the First Information Report.

22. That the house of the applicant's son, who is abroad, and which is adjacent to the house ~~in~~ of the applicant was also searched and the family members of the applicant were humiliated in most shabby manner. In this regard it would also be relevant to state here that under the orders of police officers investigating the First Information Report the Bankers of the applicant and his family members have also been asked and

instructed not to operate their respective bank accounts although the applicant had furnished all necessary details and pass books etc. to the police authorities which clearly indicates that the applicant is being harassed unnecessarily and in an absolutely arbitrary manner despite of his meritorious and long service in the department.

23. That although the first information report was lodged subsequent to the passing of the impugned suspension order dated 11th August, 1987 neither the suspension order is being revoked by the authorities nor any departmental proceeding is being initiated against the applicant and now the department is taking all together different stand that as a police investigation is pending against the applicant, it would not be possible for revoking the suspension order although there is nothing against the applicant to justify the above referred suspension order.

24. That feeling aggrieved against the impugned suspension order dated 11th August, 1987, the applicant preferred a representation to the President of India clarifying the whole situation and requesting for the revocation of the arbitrary and illegal suspension order especially when no departmental proceedings are pending or contemplated against the applicant as in spite of

lapse of more than seven months, no charge sheet whatsoever has been issued against the applicant nor the suspension order has been revoked. The applicant has no other remedy to him under the relevant Service Rules except to approach this Hon'ble Tribunal

25. The applicant further declares that he has not previously filed any application, writ petition or suit regarding the above referred suspension matter in respect of which this application is being made before any Court of law or any other authority or any other bench of the Tribunal nor any proceedings in the nature of writ petition or suit are pending in respect to the above referred suspension matter in any court or authority.

26. That on the grounds enumerated hereinafter the instant application preferred by the applicant is liable to be allowed.

G R O U N D S

- a. Because no departmental or disciplinary proceedings are pending against the applicant.
- b. Because in spite of lapse of more than seven months no charge sheet whatsoever has been issued against the applicant.
- c. Because the suspension of the applicant is

absolutely unjustified and unwarranted in the eyes of law.

- d. Because the applicant has so far not been indicated the grounds of suspension in accordance with C.C.S (C.C.A.) Rules, 1965.
- e. Because the applicant has been placed under suspension in absolutely arbitrary and malafide manner.
- f. Because the continuance of the suspension order is absolutely unjustified and unwarranted in the eyes of law.
- g. Because especially in view of the fact that the applicant was already transferred to Allahabad there was no justification of placing the applicant under suspension as in any case, even if any departmental enquiry was contemplated against the applicant, the applicant's continuance in service would not have prejudiced the case.
- h. Because in accordance with various pronouncements of the Hon'ble Supreme Court and Hon'ble High Court, suspension of the applicant is absolutely unjustified and not sustainable in the eyes of law.
- i. Because the continuance of the suspension order is absolutely unjustified and unwarranted and malice in fact and malice in law.
- j. Because the department has already preferred an

appeal against the adjudication order passed by the applicant which is pending before the Collector (Appeals) New Delhi and in which no interim orders have been passed.

- k. Because the applicant had passed the adjudication order relying upon the pronouncements made by the Hon'ble Supreme Court and the various pronouncements made by the Hon'ble High Court and said order was passed by the applicant in quasi judicial capacity.
- l. Because the perusal of the First Information Report indicates that there is nothing against the applicant except that he has passed adjudication order on 31st July, 1987 in his official capacity as Assistant Collector, Central Excise, which is a quasi judicial order and which is also appealable.

R E L I E F S

Feeling aggrieved against the above referred impugned suspension order, the applicant prays that this Hon'ble Tribunal may very kindly be pleased to:-

- (i) pass orders quashing the impugned suspension order contained in Annexure A-3 to this petition after summoning the original and further direct the opposite parties to treat the petitioner in continuous service and to pay full salary and other

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allowances admissible to the applicant notwithstanding the impugned suspension order or to pass any other suitable order or direction as this Hon'ble ~~Govt~~ Tribunal may deem just, fit and proper in the circumstances of the case.

(ii) Pending final decision on the application, the applicant seeks and prays that this Hon'ble Tribunal may very kindly be pleased to issue ad interim order of stay to stay further operation of the impugned suspension order contained in Annexure A-3 to this petition.

Particulars of the Postal Order in respect of the Application Fee:-

1. Number of Indian Postal Order : DD/5 059820
2. Name of issuing post office : G.P.O., Lucknow
3. Date of issue of Postal order : 21st March, 1988
4. Post Office at which payable : Allahabad.

List of enclosures:-

(1) ANNEXURE A-1 : Adjudication order passed by the applicant dated 31st July, 1987

(2) ANNEXURE A-2 : Transfer order of the applicant dated 7th August' 87.

(3) ANNEXURE A-3 : Impugned order of suspension dated 11th August, 1987.

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(4) ANNEXURE A-4 : First Information Report dated 13th August, 1987 lodged against the applicant.

VERIFICATION

I, Mohd. Abdul Hamid, son of Mohd. Abdul Rashid, aged about 57 years and 8 months, working as Assistant Collector in the office of Central Excise, 38, Mahatama Gandhi Marg, Allahabad, resident of S-II-4, LDA Colony, Kanpur Road, Lucknow do hereby verify that the contents of paras 1 to 25 are true to my personal knowledge and para to 26 ~~are~~ ^{is} believed to be true on legal advice and that I have not suppressed any material fact.

Date : MARCH 22, 1988

Place: Lucknow

(MOHD.ABDUL HAMID)

A.16. Pervare

IN THE CENTRAL Administrative Tribunal

ANX NO.1

AN 14
15

Office of the Assistant Collector of Central Excise,
LUCKNOW

ORDER IN ORIGINAL NO.V(104B) (30) 259-Val/78/87, dated
31.7.1987.

Passed by Shri D. A. Hemid, Assistant Collector of Central
Excise, Lucknow.

R.B.(1) This copy is given free of charge for the private
use of the person to whom it is issued.

(2) Any person doining himself aggrieved by this order
may appeal against the order to the Collector of
Appeals, Central Excise, New Delhi. The appeal
must be filed within three months from the date of
personal service or on the date of receipt by post
by the party. It should bear a Court fee stamp
of Rs.1.00. It must be accompanied by :-

- (a) Three copies of the appeal and;
- (b) four copies of the order out of which one copy
of the order must bear court fee stamp as
under :-
- (i) If the amount or value of the subject matter
is fifty or less than rupees..... 50 p.
- (ii) If such amount or value exceeds fifty rupees,
Rs.1.00 only.

NAME & ADDRESS OF THE PARTIES :

D/S Rodi Carpets Ltd.,
Kathwara,
Raibareli.

PRICE FACSIMILE OF THE ORDER :

D/S Rodi Carpets Ltd., Kathwara, Raibareli,
manufacturers of Floor Coverings namely Carpets falling
under erstwhile Tariff Item No.22B (now falling under
Chapier sub-heading No.5701.11 of the Central Excise
Tariff Act, 1985 (5 of 1986) submitted price lists in
Part I for approval under section 4 of the Central Excise
Act, 1944 detailed herunder :-

	Price List dated	Effective date
1.	20.4.80	20.4.80
2.	23.5.80	23.5.80
3.	20.8.80	20.8.80
4.	30.10.80	30.10.80
5.	1.5.81	1.5.81
6.	3.10.81	3.10.81
7.	23.10.81	23.10.81
8.	15.2.82	15.2.82
9.	16.8.82	16.8.82
10.		

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U/S Ibbi Carpets Ltd., Raigarh were also selling Floor Coverings from their sale depots, besides factory gate sale. Under vide this office letter C.No. V(100)(30)259-VAL/70/4900 dated 28.6.70, they were requested to disclose their pattern of sales and the prices charged at the depots. U/S Ibbi Carpets Ltd., Raigarh hereinafter called "the party", intimated their pattern of sale as follows:-

"We are selling our goods both at the factory gate and also from our own Depots on transfer of goods after payment of duty. The value of goods on sale at the factory gate and Ex-Depots is the same except that the difference in price between the sales at the factory gate and sales from depot amounting to Rs.31.25 per sq.mt. is due to the element of Post manufacturing expenses which are not added to the assessable value under section 4(I)(a). Besides freight is being charged on actual basis. These post manufacturing expenses are actually incurred by us on account of distribution and marketing expenses and maintenance of Depots which are a part and parcel of our own organisation. We are not charging any 'infield cost' or post manufacturing expenses on sale at the factory gate. From Depots also sales are made to independent buyers and not to related persons.

The party vide this office letter C.No. V(100) (30)259-VAL/70/4976 dated 3.7.70 were informed that from their pattern of sale it appeared that they were removing goods to their depots and selling after adding an amount of Rs.31.25 per sq. mt. Since at the time of removal, there is no sale involved but only transfer of stocks, there was no question of treating such goods as being covered by price list in part I for the purpose of levy of duty. As such value was to be calculated as per the valuation rules on the basis of sale price at the depot with deductions on various accounts as permitted by the rules. Therefore, the excess charges of Rs.31.25 per sq. mt. did not appear to be permissible deduction under Sec. 4(2). Therefore, the party was requested to file price list for such goods in part VII.

The party vide their letter dated 7.7.70 pointed out to the then Assistant Collector, Central Excise, Lucknow that their price list dated 9.10.69 in Part I U/S 4(I)(a) has already been approved by him on 3.5.70. They were therefore, entitled to make clearances under the said price list. They further mentioned that they were filing price list in Part VII under protest as desired corresponding to price lists in Part I mentioned above, without prejudice to their submission that Part VII has no application to these clearances in as much as the sales were being made at the factory gate and the normal price of the goods at the factory gate was also retainable and had been approved. They drew attention to the judgement of Patna High Court in the case of Tata Engineering & Locomotive Co. Versus S.N. Guha (1977 Taxation Law Reports para 219), in which the Patna High Court has held that in cases where ex-factory price is available the question of taking price at which the

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goods are sold at the depots of assessors for the purposes of determining the assessable value do not arise. They also pointed out that in this regard Special leave petition to appeal was filed by the Government of India against the judgement of the Patna High Court but the said S.L.P. was dismissed by the Supreme Court. They also submitted a copy of the order of dismissal of the Supreme Court along with their said letter and urged that since the decision of the Patna High Court has become final and binding and their case is clearly covered by the said decision they requested that their price lists should be approved in Port I only. By another letter dated 30th July, 1940, the party requested that pending approval of their price lists, they may be permitted under Rule 9 B read with Rule 173C of Central Excise Rule 1944 to clear the goods under provisional assessment basis.

Finally a show cause notice was issued to the party via this office C.No.V(101)(30)259-Val/78/291 dated 17.1.43, by which they were required to show cause to the Assistant Collector of Central Excise, Lucknow as to why the amount of Rs.31.25 per sq. mtr. should not be loaded in the assessable value and the price lists mentioned therin should not be modified under the provisions of Rules 173C of Central Excise Rules, 1944, in as much as the party had claimed that the goods are sold in the ordinary course of wholesale trade and the prices are the sole consideration and the goods are sold at the factory gate to the independent buyers at the prices disclosed in Col.3 of the price lists in Port I, whereas the alleged sales at the factory gate at the price shown in Col.3 are to the favoured buyers in small quantities at the sole discretion of the company. It was further alleged in the said show cause notice that there is no free and real option to the dealers to buy the goods at the factory gate and the prices shown in Col.3 of the price lists in Port I are not the normal prices at which the goods are sold in the ordinary course of wholesale trade. It was also alleged that the despatches from the factory are made on the basis of pending orders statement received from their Head Office at Delhi, containing the names and addresses of the buyers but the despatches are made to the Depots from where the goods are re-sold at the dealers after levying the additional charge of Rs.31.25 per sq.mtr. That in respect of sales of U.P. the goods are transported from the factory to the transport agency at Rampur and are generally rebooked from the transport agency to the dealers, buyers without being received at the Depot. Only the invoices are raised from the Depot after levying the additional charges and hence the price at which these goods are sold in the course of wholesale trade is inclusive of Rs.31.25 per sq. mtr. It was also alleged that as per their gross margin statement the gross margin is calculated only on the basis of in-depot prices. No calculation of gross margin is done on the basis of out-depot prices. The gross margin on the basis of which the requirement is met on the price, nowhere

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contemplated free and unrestricted sale of goods at prices exceeding Rs. 31.25 per quintal.

The list of documents on the backs of which the above mentioned allegations were made in the said show cause notice were detailed in the annexure to the show cause notice.

The party vide their letter dated 10.2.53 requested for supply of copies of the documents relied upon as per annexure to the show cause notice, which were duly supplied to them. Thereafter, the party in their several communications requested for extension of time for calculating their defense reply on the ground that their council at Delhi was not readily available.

Defense put forth by the party:

The party stated that in reply to the show cause notice vide letter dated 30.5.53 passed by the Divisional Officer, Lucknow wherein they have inter alia contended as follows:-

- (i) That the price quoted in Part I submitted for approval denotes the prices of their product namely fiber covering (Carpets) sold to independent buyers at the time of removal from the place of manufacture, which is the normal price of the product for delivery at the factory gate under section 4(2)(a) of the Central Sales Tax Act, 1944.
- (ii) That the said excisable goods are freely and available for sale to independent buyers at rates less than and the price is the sole consideration for sale at the factory gate.
- (iii) That, since in their case the price prevalent at the time and place of removal from the place of manufacture i.e. the factory is not only reasonable but is also known there is no authority of law for law regarding the said price as the normal price of the goods. And for this they heavily relied upon the aforesaid judgment of the Hon'ble Patna High Court which has become absolute and final by virtue of the dismissal of the SLP filed by the Govt. of India copy of which is already on record of the case file.
- (iv) That under section 4(1)(a) the normal value (hereinafter called the excisable value) is the price at which the goods are ordinarily sold by a manufacturer to a buyer in the course of wholesale trade for delivery at the time and place of removal provided the price is the sole consideration. In other words the price charged by them from wholesale buyer and/or dealers would constitute the excisable value of their product under section 4 of the Act, and it has to be accepted to be the excisable value for the purpose of payment of duty of excise levied thereon. However, they have been rightly holding that goods through their depots and partly at the factory gate, the price at which the goods are sold at the factory gate will

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(ii) That section 4(1)(a)(iii) of the said Act provides that where the goods are sold to or through the related persons, the assessable value shall be the price at which such goods are sold by the related persons. Further section 4(4)(e) defines the related persons/connected persons to be persons who are associated with the assessee that they have mutual interest in the business of each other and includes distributor, sub-distributor, relative, holding company and subsidiary company. The Supreme Court in the case of Union of India vs. Bombay Gas International while

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also be the assessable value for the goods sold through their sale depots, irrespective of the procedure of sales at the factory gate because, the provisions of sections of section 4(2) of the said Act are redundancy in nature and they apply only to cases where the price of any assessable commodity at the time and place of removal is not known. In their case, the factory gate price is available, therefore, no other price is relevant for the purpose of section 4 of the said Act. They submitted that the quantum of sale at the factory gate is irrelevant and mere quantum of sale is sufficient for determining the assessable value.

(v) That in the light of the above submissions they requested that their price lists submitted in Part I should be approved without any modification.

(vi) That the price lists in Part VII submitted by them under protest corresponding to the price lists in Part I as detailed in the impugned show cause notice and provisionally approved by the then Assistant Collector of Central Excise, Lucknow are irrelevant and are liable to be consigned to records, because in their case the assessable value is ascertainable u/s 4(1)(a). Even if the 92% of floor coverings were sold through their sale depots and only 8% were sold to independent whole sale buyers/dealers, the price at which such goods were sold to independent whole sale buyers would be the assessable value under section 4 in as much as the whole sale dealers at any length in respect of such 8% sales stand fully established.

(vii) That the provisional approval of price lists in Part VII corresponding to P/Ls in Part I, is not in accordance with law, therefore, such provisional approval is invalid because under Rule 173 in regard with rule 173 CC of Central Excise Rules 1944 the price list can be approved once only. Therefore, if the approval of the price list is likely to be delayed for a considerable time, the proper officer can order for provisional assessment under Rule 9 B of the said rules.

(viii) That in regard to the other allegation as detailed in the impugned show cause notice, the party has stated in their defense reply as follows :-

(a) That section 4(1)(a)(iii) of the said Act provides that where the goods are sold to or through the related persons, the assessable value shall be the price at which such goods are sold by the related persons. Further section 4(4)(e) defines the related persons/connected persons to be persons who are associated with the assessee that they have mutual interest in the business of each other and includes distributor, sub-distributor, relative, holding company and subsidiary company. The Supreme Court in the case of Union of India vs. Bombay Gas International while

dealing with the provisions concerning to related persons as embodied in section 4(1)(a) observed that since under new section 4(1)(a) the price should be the sole consideration for the sale, it will be open for the Revenue to determine on the basis of evidence whether a particular transaction is one where extra commercial consideration has weighed. The party has contended that the Control Board's authority has failed to prove and substantiate that the sales at the factory gate were to the favoured buyers in small quantities at the sole discretion of the company. The party filed 39 photocopies of their invoices which proved that the goods have been sold to independent buyers during the course of wholesale trade at the factory gate at ex-factory prices who can not be treated as related persons/favoured buyers by any stretch of imagination.

(b) That the documents listed at pt. No. 1 and 2 of the annexure to the show cause notice, clearly find mention as under:-

At pt. No. 1:- "The said product will be sold on principle to principle buyers at the prevailing ex-factory price excluding sales tax and other taxes."

At pt. No. 2:- "Prices quoted are ex-factory including excise duty, but excluding sales tax, octroi and levies and other charges."

The party has contended that they have nowhere mentioned in the relied upon documents that the supplies shall be effected from the company's depots with an extra charge of Rs. 31.25 per kg. mtr. The photostatic copies of 39 invoices filed by the party of the relevant period issued to dealers clearly show that the goods were supplied to these dealers at ex-factory price without any extra charge of Rs. 31.25. These buyers are not favoured buyers or related persons.

(c) That the documents listed at serial No. 3 to 7 of the annexure to the show cause notice were the statements of the employees of the company and they were not at all incriminating statements in so much as they only contained detailed narration of the procedure followed by the factory at the time of despatch of excisable goods from the factory or the pattern of sale of goods ex-factory as well as ex-depot and that the buyers used to place their orders with the company.

(d) That the documents at pt. No. 8 listed in the annexure to show cause notice very clearly indicated ex-factory price as well as ex-depot prices. Wherefore, it was very well known to the dealers/buyers that if they purchased the flour covering from the factory direct only ex-factory prices shall be charged from them. Thus the option was open to all the buyers/dealers to place their orders for supplies either directly on factory gate prices. Wherefore, in the pt. No. 3 price lists in Part I were the normal prices at which the goods were sold in the ordinary course of wholesale trade.

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(a) That it was an erroneous presumption that the company did not contemplate action at the factory gate. As a matter of fact, the word "without notice" mentioned in their formal Report to the relevant period listed at Bl. No. 9 in the enclosure to the show cargo notice was inclusive of action taken in the factory or improved warehouse. They also informed that their sales invoice it had been maintained by the Central Sales Office and they have found that the sales by and large had been effected at the factory gate to independent buyers/dealers without any written commercial consideration.

(f) That it is now absolutely incorrect to presume that all sales were to be effected from the warehouse only.

(g) That all the documents relied upon in the enclosure to the show cargo notice merely go to show that they had sales ex-factory as also ex-warehouse. The sales at the factory gate were not made to licensed buyers. The sellers have the usual option to lay the goods at the factory gate. The ex-warehouse price is inclusive of an additional charge of Rs. 51.25 per cu. mtr. ex warehouse, distribution and delivery and forwarder's commission. The party herein referred to the District Judgment of the High Court in favour of the plaintiff holding that when information where it has been held that if the on-factory price were paid to the seller charged during the course of sale upto 1000 kg to deliverance of delivery of carriage length even if no delivery is made, the total price have to be increased without going into the ex-warehouse, and that they have proved very clearly of fact that their warehouse prices at the factory gate were not only acceptable but were fairly low.

(h) The party has also pointed out in their affidavit that out of 27 sales lists which find mention in the show cargo notice, the following 11 sales lists on which no afternoon sales or footed up to treated as open sales.

Sl. No.	Date of sale	Delivery	Rate	Remarks
2.	25.4.30	25.4.30	1	
10.	25.10.31	25.10.31	1	
19.	"	"	VII	
24.	25.7.30		I + VII (as per not yet settled in court Ex-warehouse delivered in the show cargo no notice)	
26.	25.11.30		II	

(1) The party has also submitted alongwith their defence reply, a statement showing direct sales from factory gate from July, 79 to June, 1982. According to this statement they have sold direct from the factory gate 13782 sq.mtrs. in 1979, 8454 sq.mtrs. in 1980, 19590 sq.mtrs. in 1981 and 14745 sq.mtrs. in 1982, which indicates their factory gate sales as 17.57%, 6.7, 8.65 and 11.66% respectively.

(2) The party also requested for an opportunity of personal hearing which was granted to them on two occasions i.e. on 25.6.87 and 13.7.87. The representatives of the party reiterated the submissions already made in their defence reply dated 20.6.86 at the time of hearings that their price lists in Part I as contained in the show cause notice as well as those submitted subsequently may be approved finally. They also drew the attention of the undertrial not in the case of Colleage of Central Unit, Bharat Venkaia Balaji Rubber Factory Ltd., Nalas decided by the C.R. 201 (1981) such that the New Delhi and reported in 1987 (30) I.L.R. 201 (National) where such sales to special categories of buyers like Defence authorities was not considered to be of the representative character for majority of sales made to others. The learned counsel of the party pointed that in their own case, the sales of the factory gate due to independent buyers/balakas in the course of which the sales without any price consideration and not to any single special category of buyer. Thereafter, the said judgment was not applicable in their case. The learned counsel also drew the attention of the undertrial on the recent judgment in the case of Union of India Versus Bombay Tyres International (1983 I.L.R. 1895 (S.C.)) where the Hon'ble Supreme Court have observed that by no stretch of imagination the regional sale offices, Godown depots or branches of Central Marketing Division of the manufacturer can be treated as political parties or favour buyers. Thereafter, in case where the party requires selling the regional regional depot or Godown or branches, the manufacturer will be not compelled to give the time and place of removal. In such case the remunerative value has to be determined on the basis of sale price at which such depots or regional sales offices sell the goods. But the cost of transportation over the distance obtained on an average basis will discount and other reasonable deductions under section 4 will be deducted from such price before over an account, where a manufacturer transfers goods to his regional sales officer/tyro, the entire duty is to be collected at the time of removal of the goods from the factory. But, where the manufacturer is partly selling his goods through the regional depots, Godown, and partly at factory gate, the price at which the goods are sold at the factory gate will also be the assessable value for the goods sold through regional sales offices/depots, irrespective of the percentage of sales at the factory gate because the provisions of section 4(2) are evidently in nature specific party only to cases where

Discrepancy & Findings :

I have carefully gone through the records of the case, the show cause notice, the documents relied upon as detailed in the answer to the show cause notice, the defence reply dated 30.5.83 and the submissions made at the time of personal hearings on 25.6.87 and 16.7.87.

After hearing the learned counsel for the party and giving consideration to the matter in all its aspects, I am of the opinion that the judgment of the Hon'ble High Court, Patna, which has also been confirmed by the Hon'ble Supreme Court as cited above is relevant in this case.

I find that the party is partly selling such goods through its depots and partly at factory gate. I also find that the party is not selling through its own unit production through its depots.

The first question to be answered about the factory gate sale is whether such sales have been made to favored buyers or the sole discretion of the company. I find that the sales made at the factory gate and the sales made by independent buyers/dealers at an factory gate price during the relevant period were not made to favored buyers or related persons. The party has proved the fact that the sales made from the factory gate were made to independent buyers/dealers during the course of wholesale trade without any extra commercial consideration. Therefore, the normal price of their production for delivery at the factory gate in under section 4(1)(a) of the said Act is not only ascertainable but is clearly known. It has been held by the Hon'ble Patna High Court in the case of Tata Engineering and Locomotive Co. versus Tata (judgement also confirmed by the Supreme Court), that when the said manufacturer is partly selling his goods through its depots and partly at factory gate, the price at which the goods are sold at the factory gate will also be the assessable value for the goods through the depots, irrespective of the percentage of sales at the factory gate, because the provisions of section 4(2) of the Act are residuary in nature and they apply only to cases where the price of any assessable commodity at the time and place of removal is not known.

I have also carefully gone through the Supreme Court's judgment in the case of Union of India versus Bombay Tyre International (1985) 112 1895 (S.C.). This decision has not over ruled the above judgment of Patna High Court. Rule 49 of the said decision is reproduced below:-

"15. It is evident that for purposes of determining the 'value', I readily agree with both the old section 4(2) and the new section 4(1)(a) except of the price for delivery in the course of wholesale trade of an article for

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delivery at the time and place of removal, provided, the factory gate. Where the price constituted under the old section 4(a) or under the new section 4(1)(a) is not ascertainable, the price is determined under the old section 4(b) or the new section 4(1)(b), section 4(1)(b) reads as under:-

(b) Where the normal price of such goods is not ascertainable for the reasons that such goods are not sold for any other reasons the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

The decision in the above case is interesting also. It is laid down that where the normal price at the factory is either not ascertainable or not known only then the nearest ascertainable equivalent thereof should be determined. In the instant case the test question of fact is as to the extent of more than 17% of the factory price is ex-factory prices as indicated in Part 3 of those publications in Part 3. Therefore, where in no person may know the normal price at the factory, the normal price is calculated as being the ex-factory price without going into the cost of production of the said goods which do not appear to be reflected in the circumstances as mentioned above. The said decision in so far as the ascertainable equivalent may be "low, the value in the article is not less than 100 rupees (using this term in a general sense), and into 100 rupees value have been necessary components including those which have comprised the value and given to the article the quality of the same. Therefore, the amount incurred on account of the general expenses, which have contributed to the value into the article, which apparently would be the cost of delivery, are liable to be included." The decisions of the party involved relied on the factory price of 17% above which prices also do not show that they have charged the additional amount of Rs. 31.25 per kg. etc. during the period under issue. Therefore, in these circumstances the additional amount of Rs. 31.25 per kg. etc. claimed by the party in question is not to be reflected as it is reflected in the article. In view of the above price 11% is calculated in Part 1. Also no deduction has been claimed by the party, particularly because of the fact that the sales at the factory gate ex-factory prices have been made to independent buyers / dealers during the course of which the goods were without any other commercial consideration.

I have also carefully gone through the decisions of the Tribunal in the case of Initiator of Trade (P) Ltd. versus United Tyre & Rubber Company Ltd., Calcutta (1967) (30) CLP 291 (Relevant). Page 25 of the said decision is reproduced below:-

"The learned counsel for the two contented that since the factory gates at the factory gate could not be made available for deduction section 4(1)(b) cannot have any application to the price of the goods. The answerable relies on the ground that a sum is to be deducted from the total price

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