CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:399/2000

Dated this the 6th day of August, 2003

CORAM:HON'BLE SHRI A.S.SANGHVI, MEMBER(J)
HON'BLE SHRI SHANKAR PRASAD, MEMBER(A)

N.W.Khadse,
Inspector, Central Excise,
Kandivali divn. Range - 01,
Mumbai - V,
Room No.12, Malwani,
Marve Road, Bombay - 400 097 ... Applicant

By Advocate Ms.Delilah Fernandes for
Shri Suresh Kumar

V/s.

1. Union of India, through
Secretary, Ministry of Finance,
Department of Revenue,
South Block New Delhi-110 001.

2. Chief Commissioner of Central Excise,
Central Excise Building,
Maharshi Karve Road,
Opp.Churchgate Station,
Bombay - 400 020.

3. The Commissioner,
Central Excise, Mumbai-V,
Utpad Shulk Bhavan Bandra Kurla
Complex Bandra (E), Mumbai - 51

4. Assistant Commissioner of Central Excise,
Kandivli Dn, 4th Floor,
Takshshila Bldg, Samant Estate,
Goregaon (E), Mumbai-V,
Mumbai - 400 063. ... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)

Per Shri Shankar Prasad, Member(A)

Aggrieved by the order of disciplinary authority dated 19.6.1999 imposing the penalty of stoppage of two increments with cummulative effect, the order of appellate authority confirming the said penalty and the order of revisional authority refusing to interfere, the applicant has preferred this OA. He has sought the reliefs of quashing of these orders.

2. The case of applicant in brief is that subsequent to his promotion as Inspector Central Excise he was deputed to work under Superintendent V. While working in Division X the applicant was asked by the Superintendent to verify the ground plan of one Shakti Acquaculture Farms Ltd (SAFL) for the renewal of licence of the Bonded Warehouse. As directed he checked the ground plan. As he was new to the job he went by the directions of Superintendent. In any case the higher officers were aware that no private Bonded Warehouse existed.

He was issued a chargesheet. The Enquiry officer, the Commissioner Departmental Enquiries under CVC, exonerated him of the charges. Yet after service of disagreement note, the disciplinary authority, a comparatively junior officer imposed the penalty. The chargesheet was issued by an officer of the rank of Additional Commissioner while the penalty is issued by an officer of the Deputy Commissioner rank.

The reasoning given by the disciplinary authority for disagreeing with the report of Enquiry Officer is improper.

3. The case of respondents in brief is that the verification of ground plan is not an empty formality and the ground plan helps to understand if adequate arrangements for safeguarding revenue have been made. There was also no comments about compliance of condition given by Assistant Collector while granting the certificate and as to whether Rule 140 of Central Excise Rules was satisfied.

The departmental enquiry was instituted against four persons and hence a senior officer was appointed. The disciplinary authority can disagree with the findings of Enquiry Officer after serving a note of dissent. Additional Commissioner and Deputy Commissioners were officers of the same rank at the material point of time and therefore the orders are valid as also clarified in DG P&T letter below the said rule. This question was not raised before the appellate authority.

That all the actions have been taken in accordance with law.

4. We have heard the learned lawyer on behalf of both the parties.

5. We have noted that under the 100% EOU scheme a unit is entitled to import/procure domestically without payment of Customs/Excise duty capital goods, raw materials etc. They also

have an export obligation. With a view to safeguarding the revenue, proper arrangements have to be made for bonding of premises. Before the premises can be bonded, the village has to be declared a warehousing station. It appears that when the first consignment of prawn feed was imported and cleared by Bombay Port, it was found that there was no warehouse to store the same. Accordingly the chargesheet was issued.

6. There was a preliminary enquiry. The applicant had made the following statement.

> "But I was aware of the application for the renewal of the said licence. I have processed the application and forwarded the papers to the Supdt. for renewal. I did not notice the entry in the licence No.VIII/Misc.(30)2/SA/92 dated 28/8/92, mentioning godown, being the property of Shakti Acqua Culture Farms Ltd. is hereby licenced u/s. 58 of the Customs Act, 1962. When I checked the ground plan submitted alongwith the application, I did not see any provision for any building in it. I have not noticed this anamoly when I was processing the application for renewal. My Supdt. Mr.Shenava has forwarded a letter 7/12/1992 from M/s. Shakti Aqua Culture Farms Ltd. informing the receipt of imported consignment. I contacted my supdt. and informed him that since there was no building to keep the goods, how to go for inspection of the same. I did not go for inspection. I have no knowledge where these goods were stored. I was also not aware that Saphale Village has to be declared as a warehousing station, before the private bonded warehousing licence could be issued. I have gone to the site and verified the contents of ground plan but I have not seen any building meant for the private bonded warehouse, anywhere in the site. I have brought this fact to my Supdt.'s notice. The licence is prepared in the Division Office and the Technical Supdt. put up the papers to A.C. for signature. I have been shown a letter dated 8/1/1993 from A.C. Customs, Bond Deptt. to Shakti Acqua Culture Farms Ltd., regarding the non-issue of re-warehousing certificate, which was marked to me by the Supdt. on 27/1/1993 what action did I take?

> I informed my Supdt. that I have received another letter also informing arrival of the imported goods and asked for his directions to what line of action I should follow as there was no building for warehousing was available. And also how to issue re-warehousing certificate. The Supdt. told me that he is going to inform the A.C. about the matter."

7. The showcause notice issued to the applicants has given the following reasons for disagreement with the report of Enquiry Officer.

> "(a) the purpose of verification of ground plan for the grant of private bonded warehouse, was to assess the suitability of the premises for safe storage of bond goods. As the safeguards were not available, Shri N.W.Khadse, Inspector, should have brought the same to the notice of his seniors and should have also rejected the ground plan.
>
> (b) there was lapse on the part of Shri N.W.Khadse, Inspector, as admitted in his statement, dated 30/6/1993, that he did not go for inspection of the imported goods. In fact, Shri N.W.Khadse, Inspector, should have ensured secure re-ware- housing of the goods (non-duty paid), failing which he should have intimated the Assistant Commissioner (Customs), to enforce the Bond and recover the duty."

8. The disciplinary authority can disagree with the report of enquiry officer. The report of enquiry officer is not binding. The decision in Managing Director, ECIL V/s. B.Karunakar 1993(4) SCC 727 refers. We find that the reasons assigned are justified.

9. As far as the contention regarding deputy commissioner being not of the same rank as additional commissioner is concerned we find that it has been contended by respondents that at that time they were officers of the same rank. The challenge

is not on the ground that deputy commissioner is not the competent authority or is lower in rank to appointing authority. Thus no case for interference is made out.

10. The next point which has been urged on behalf of the applicant is that though the penalty was reduced to reduction of pay by two stages and not earning increments but without cumulative effect in appeal in the case of his predecessor N.M.Nunnes there was no moderation in his case. The penalty is accordingly excessive.

11. We find that in the instant case the charge sheet relates to not exercising due caution at the time of renewal, not going for inspection even after receipt of letter of Assistant Collector for non issue of warehouisng certificate. The charge in the case of N.M.Nunnes was merely improper furnishing of report at the time of grant of licence. Thus the charges are distinguishable.

Thus no ground for interference with penalty is made out.

12. Under the circumstances, no case is made out either for interference with the findings of disciplinary authority or with the quantum of punishment. The OA is accordingly dismissed. No costs.

Shankar Prasad

(SHANKAR PRASAD)
MEMBER(A)

(A.S.SANGHVI)
MEMBER(J)

mf.

8-8-2003