

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH:MUMBAI

OA NO.1210/1994
THIS, THE 19TH DAY OF OCTOBER, 2000.

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR.B.N.BAHADUR, MEMBER (A)

Smt. Sarla Ganesh Joshi
Widow of late Ganesh Jivaji Joshi
Retired Superintendent
R/o Suman Kunj, Maratha Colony
Dahisar (East)
Bombay-400068.

... Applicant

(By Advocate Shri P.A.Prabhakaran)

vs.

1. Union of India through the Secretary
Ministry of Finance
Dept.of Revenue
New Delhi.
 2. Union Public Service Commission
through Secretary
 3. Collector of Central Excise, Bombay II
Collectorate, Piramal Chembur
Lalbaug, Parel
Bombay-400012.
 4. Shri Surjit Singh
the then Collector of Central Excise
Bombay-400012
Now Principal Collector of Customs
Bombay.
 5. Shri Guru Sharan Singh
the then Assistant Collector
of Central Excise, now retired
resident of 44-A Shere Punjab Co-op.Housing
Society, Mahakali Cave Road
Andheri (East)
Bombay-400093.
 6. Shri A.K. Pawar, Assistant Collector of
Central Excise, Division
C/o Respondent No.1
 7. Pay and Accounts Officer
Central Excise Bombay-II
8th Floor Piramal Chember
Lalbaug, Parel
Mumbai-400012.
 8. Assistant Collector of Central Excise
Bombay II, Division VI
Bombay.
- Respondents

(Shri M.I.Sethna, with Shri V.D.Vadhovkar, counsel)

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ORDER (ORAL)

JUSTICE ASHOK AGARWAL:

Shri Ganesh Jivaji Joshi, who filed the present OA at the material time was working as a Superintendent Central Excise. He was incharge of Range III, Division IX. Disciplinary proceedings were initiated against him under the following articles of charge:-

ARTICLE - I

Shri G.J. Joshi, while posted as Supdt., incharge of Range-III Divn. IX gave incorrect exemption certificate to M/s Shroff Taxtile Limited. In the said certificate, Shri Joshi informed the concerned party that as they were manufacturing Low Density Polythylene sheets out of duty paid materials and not claiming any set off or modvat benefits on raw materials, they were exempted from payment of Central Excise Duty under Notfn. no., 132/86(35), dated 1.3.86, for the year 1986-87. The party in fact was not entitled to the said exemption for their product. Since the exemption certificate was issued to the firm, they cleared the goods without payment of duty resulting in loss of Govt. revenue to the tune of Rs.10,16,137.62. By issuing the incorrect exemption certificate, Shri Joshi, Supdt. has exhibited gross negligence of duty and has thus contravened the provisions of Rule 3(1)(ii) of CCS(Conduct) Rules, 1964.

ARTICLE - II

Shri G.J. Joshi, while posted as Supdt. incharge of Range-III Dn.IX, had issued incorrect exemption certificate to M/s.Shroff Textiles Ltd. Shri Joshi, Supdt., did not take prior approval from his divisional A.C. for the purpose. Shri Joshi even did not inform his divisional A.C. about the said exemption letter after its issue. This resulted in loss of Govt. revenue to the tune of Rs.10,16,137.62. Shri Joshi has thus exhibited gross negligence, lack of devotion to duty and has behaved in a manner unbecoming of a Govt. servant. He thereby contravened the provisions of Rule 3(i)(ii) & (iii) of CCS(Conduct) Rules, 1964.

ARTICLE - III

Shri G.J. Joshi, while posted as Supdt., incharge of Range-III Dn.IX, had received a declaration dated 11.4.86 filed by M/s. Shroff Textiles Ltd. claiming exemption under notfn. no. 132/86, dated 1.3.86, for their product expanded low density polythylene flexible sheet, ...3..

on 15.4.86. Shri Joshi failed to thoroughly examine/verify the said declaration and issued the exemption letter to the party on 15th June, 86. Even thereafter Shri Joshi did not make any effort to examine the said declaration properly, but blindly put remark of "Verified" on it and forwarded it to A.C. (Prev.) Hqrs. in August, 1986. He has thus exhibited gross negligence, lack of devotion to duty and has behaved in a manner unbecoming of a Govt. servant. He thereby contravened the provisions of Rule 3(1)(ii) & (iii) of CCS(Conduct) Rules, 1964.

ARTICLE - IV

Shri G.J. Joshi, while posted as Supdt. incharge Range-III Divn.-IX, had given pre-dated, signed letters with the address kept blank, to his Inspector, Shri S.R. Pardeshi. The said pre-dated signed letters issued by Shri Joshi were utilised by his Inspector as and when required, for visiting any factory. Shri Joshi, Supdt., by issuing such pre-dated, signed letters had exhibited gross negligence, lack of devotion to duty and had behaved in manner unbecoming of a Govt. Servant. He thereby contravened the provisions of Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules, 1964".

During the pendency of the OA, Shri Jivaji Joshi ^{exposed} had died on 8.10.1999. His widow Mrs. Sarala Ganesh Joshi ^{has} made an application being MP No.104/2000 for being brought on record as legal heir of the deceased which was allowed by an order passed on 28.3.2000. Without dilating upon the stages of the enquiry which are no longer relevant, it is enough to state that the enquiry officer by his report of 20.6.1988 had held Articles of charge I & II as proved whereas those of Articles of charge III & IV as not proved against the deceased. After the disciplinary authority had directed further enquiry, the enquiry officer by his report of 29.7.1988 had found the articles of charge III & IV also as proved. Aforesaid reports were duly submitted to the deceased in order to enable him to submit his representation against the same. The deceased had submitted his representation. He in the

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meanwhile on 31.8.1990 had retired on superannuation. The disciplinary authority after seeking the opinion of the Union Public Service Commission, by his order of 26.5.1994 had accepted the findings of the enquiry officer as also the recommendations of the Union Public Service Commission and had imposed a penalty of cut of 10% of pension of the deceased for a period of 10 years with effect from 1.9.1990. Aforesaid order is impugned by the deceased in the present OA.

2. We have heard Shri P.A.Prabhakaran, the learned counsel appearing on behalf of the deceased^{here + legal representative} as also Shri V. D. Vadhaovkar, counsel with Shri M.I.Sethna, the learned counsel appearing for the respondents. With their assistance, we have gone through the material record of the case and we find that the order impugned is just and proper and does not call for any interference in the present OA.

3. It is common ground that the assessee M/s Shroff Textiles Ltd. prior to 1.3.1986 was exempted from payment of Central Excise Duty as per Budget announcements made from time to time. In the Budget which came into force with effect from 1.3.1986, aforesaid assessee became liable to payment of Central Excise Duty. In view of this, a communication of 1.3.1986 addressed to the aforesaid assessee was issued. The assessee was directed not to clear the goods pending issue of Central Excise Licence and completion of excise formalities. The assessee was requested to approach the concerned officer along with details of clearance till 28. 2.1986^{was} and information to be furnished duly filled in triplicate. A copy of the communication of 1.3.1986 is at Annexure A-10 (i). The assessee, in turn, addressed its

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communication of 10.3.1986 undertaking to pay whatever excise duty was payable with a request to permit ^{it} to clear the goods. A copy of the communication of 10.3.1986 is at Annexure A-11(ii). The Assistant Collector who was the superior officer of the deceased, by a communication of 13.3.1986 at Annexure A-11(i) has observed as under:-

"Please find enclosed the undertaking dated 10.3.86 (in original) of the party. The product appears to be eligible for exemption under Chapter Heading 3920.32 read with Notification No.132/86 dt. 1.3.86. However, pending final decision, the party may be allowed to clear the consignments."

4. By a communication of 25.6.1986 at Annexure A-12 addressed by the deceased to the assessee, this is what has been stated by him:-

"With reference to your declaration filed by you on 15.4.86 in this office I have to state that as you are manufacturer of low density Polyethylene Sheets out of duty paid material and not claiming any set off or Modvat benefit on Raw Material.

You are exempted from payment of C.Ex.duty under Notification No.132/86 dt.1.3.86 for the year 1986-87.

Please note that if any change came in force during the above period, you will be required to inform this office immediately.

You are also requested to maintain a simple Register as prescribed under Notification No.111/78 dt.9.5.78,"

By a further communication issued by the Assistant Collector Central Excise (Preventive) Headquarters on 25.11.1986 at Annexure A-13, the assessee had been given code number certifying that the assessee is exempted from payment of Central Excise Duty. These are the documents upon which the entire case of misconduct levelled against the deceased rests.

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5. It is not and cannot be disputed that the assessee in question became liable to payment of Central Excise Duty with effect from 1.3.1986. The assessee has been informed accordingly by the communication of 1.3.1986 at Annexure A-10(i). The assessee has understood the aforesaid communication as also its liability to payment of Central Excise Duty and this is clear from its communication of 10.3.1986 at Annexure A-11(ii). The Assessee has requested for permission to clear the goods on giving an undertaking to pay whatever Excise Duty is found payable by it. This is followed by a communication issued by the Assistant Collector of Central Excise who was the superior officer of the deceased on 13.3.1986 at Annexure A-11(i). ^{With} ~~By~~ the communication, aforesaid undertaking furnished by the assessee is enclosed and an observation is, however, made that the product manufactured by the assessee appears to be eligible for exemption. The observation is further clarified by observing: "However, pending final decision, the party may be allowed to clear the consignments". Aforesaid observation of the Assistant Collector as we read ~~it~~ is an interim arrangement pending final decision to be taken in respect of the liability of payment of Central Excise Duty. It is true that a prima facie observation has been made, "The product appears to be eligible for exemption under Chapter Heading 3920.32 read with Notification No.132/86 dated 1.3.86." Despite the aforesaid observation, one cannot run away from the fact that the said observation is made conditional of a final decision to be taken. What the deceased had thereafter done is crucial and that is reflected in his communication of 25.6.1986 to the assessee at Annexure A-12.

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Here, the deceased had proceeded to grant the assessee complete final exemption from payment of Central Excise Duty. Based on the aforesaid grant, the assessee had obtained exemption thereby causing a loss to the tune of Rs.10,16,137.62 to the exchequer.

6. In our judgement if one has regard to the aforesaid facts, a conclusion is irresistible that the deceased had overstepped his lawful authority and had proceeded to grant to the assessee an underserved and uncalled for relief causing the aforesaid financial loss to the exchequer. As far as the Union Public Service Commission as also the disciplinary authority are concerned, they have not attributed any mala fide intentions as against the deceased towards the aforesaid misconduct. All that is attributed is ~~the~~ gross negligence. In the circumstances, the finding of guilt arrived at as against the deceased cannot be faulted.

7. Shri Prabhakaran after having failed in his attempt to contend that the finding of guilt is unsustainable has proceeded to contend that the aforesaid negligence which is found against the deceased is a simple negligence. The same cannot be termed as a grave negligence. In the circumstances, the penalty of cut of 10% of pension for a period of 10 years is uncalled for. In support of the contention, he has placed reliance on Rule 9 of the Central Civil Services (Pension) Rules, 1972 which in so far as is relevant provides as under:-

"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found

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guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

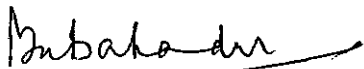
Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five (Rupees One thousand two hundred and seventy five from 1.1.1996- see GID below Rule 49) per mensem" (Emphasis provided).


8. We have perused both the opinion of the Union Public Service Commission as also the order of the disciplinary authority and we find that articles of charge I to IV have been found as proved against the deceased. If one peruses the aforesaid articles of charge, the same in no uncertain terms attributes grave and gross negligence on the part of the deceased and the same have been held to be duly proved. In the circumstances, we find that Shri Prabhakaran is not justified in his contention that his client has not been found guilty of grave negligence. It cannot be overlooked that the aforesaid negligence has caused the exchequer a loss in a sum of Rs.10,16,137.62. Aforesaid contention is, therefore, rejected.

9. For the foregoing reasons, we find that the present OA is devoid of merit. The same is accordingly dismissed.

No costs.



(B.N. Bahadur)
Member (A)


(Ashok Agarwal)
Chairman

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