

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

O.A.No.856 of 1994.

This the 31st day of July, 1997.

BETWEEN.

Ch. Satyanarayana,
Son of late Sri Surya Rao,
aged about 40 years,
working as Inspector of Central
Excise(Audit), Central Excise Hqrs.
Basheerbagh, Hyderabad,
resident of Hyderabad.

....

Applicant.



A N D

1. The Union of India,
reptd by its Collector of
Excise and Customs,
Central Excise Hqrs.,
Basheerbagh, Hyderabad-500029.

2. The Collector of Central
Excise and Customs,
Customs House, Port Area,
Visakhapatnam -530 035,
Visakhapatnam District.

3. The Additional Collector
(Preventive & Vigilance)
O/o The Collector of Central
Excise and Customs,
Customs House, Port Area,
Visakhapatnam -530 035,
Visakhapatnam District.

... Respondents.

Counsel for the Applicant - Mr. N. Rama Mohan Rao.

Counsel for the Respondents - Mr. Kota Bhaskara Rao,
Addl. C.G.S.C.

CORAM :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMN.)

HONOURABLE MR. B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

O R D E R.

(As per Hon. Mr.B.S.Jai Parameshwar, Member, Judicial))

1. Heard Mr. N. Rama Mohan Rao, learned counsel
for the applicant. Learned counsel for the respondents
was absent when the case was taken up for hearing. Since
the matter is of the year 1994, we felt to decide the
O.A. on the basis of the materials placed on record
in accordance with Rule 15(1) of the C.A.T.(Procedure)
Rules, 1987.

R
317

as amended. The said exemption was not applicable to the fabrics as per proviso to the said Notification, since the assesseees were undertaking the unspecified processes like bleaching, dyeing, printing etc. in the same factory. Shri Ch. Satyanarayana, did not apply his mind while discharging his official duties which led to evasion of duty on textile fabrics by the said assesseees."

The applicant denied the charges. An inquiry was conducted into the said charges. On 18.6.92 the Assistant Collector-Inquiry Officer submitted his report. The report of the Inquiry Officer disclosed that he had recorded a finding that the charges levelled against the applicant were not proved. The copy of the report of the Inquiry Officer is at pages 63 to 65 of the brief.

(b) A copy of the report of the Inquiry Officer was furnished to the applicant. Since the Inquiry Officer had submitted his report favouring the applicant, he did not submit any reply to the report of the Inquiry Officer. However, the disciplinary authority i.e. respondent No.3 disagreed with the findings of the Inquiry Officer with respect to the Charges I to III and concurred with the findings of the Inquiry Officer so far as it related to Charge-IV. Thus the disciplinary authority formed an opinion that the Charges I to III levelled against the applicant have been proved. The respondent No.3 by order dated 26.10.93 imposed a penalty of reduction of pay of the applicant by one stage from Rs.2240/- to Rs.2180/- in the time scale of pay of Rs.1640-2900/- for a period of two years with effect from 1.11.93. He further directed that the applicant would earn increment of pay during the period of such reduction and on the expiry of such period, reduction would not have the effect of postponing his future increments of his pay.

(c) Against the said order of punishment, the applicant submitted an appeal to the respondent No.2. The memorandum of appeal submitted by the applicant is at

R

" That the said Sri Ch. Satyanarayana while functioning as Inspector of Central Excise of Saroornagar fixed Sector/Range was incharge of M/s. Sanghi Textile Processors Pvt. Ltd. Omerkhanguda during the period from 13.10.88 to 28.3.89. The said Sri Ch. Satyanarayana did not conduct the P.B.C. checks in respect of the said factory as prescribed in Board's F.No.267/12/78 CX.6/ CX.8 dated 27.11.78 read with Instruction (T) No.11/78, General No.6/78 dated 28.12.78 issued by the Collector, Central Excise, Hyderabad. The said prescribed PBC checks were required to be conducted regularly to ascertain correct quantities of different varieties of fabrics brought into the said factory for processing and to ascertain width, weight etc., of fabrics to determine correct classification and correct rate of duty to safeguard revenue. Shri Ch. Satyanarayana knew the complexity of excise tariff on textiles and yet he did not take necessary precautionary, by conducting PBC checks. His failure led to evasion of duty on textile fabrics by the said assesseees.

That the said Sri Ch. Satyanarayana, while functioning in the said capacity, during the said period failed to enquire/investigate into the steep fall in revenue on Manmade Fabrics in respect of M/s. Sanghi Textile Processors Pvt. Ltd. during the year 1988-89 when compared to the duty paid during the corresponding period of 1987-88 on the said fabrics by the said unit and no precautionary measures were taken by him to safeguard the revenue. His failure led to evasion of duty on textile fabrics by the said assesseees.

That the said Sri Ch. Satyanarayana, while functioning in the said capacity during the said period failed to draw samples of fabrics processed by the said factory as per instructions contained in para 114-II(d)- Chapter V of Basic Excise Manual to ascertain average count of fabrics, polyester content of the fabrics and varieties of yard used in the fabrics etc., as the case may be, to determine correct classification of goods and correct rate of duty to safeguard revenue. The said Sri Ch. Satyanarayana by his letter under O.C.No.54/89 dated 10.1.89 to the Assistant Collector, Central Excise, Hyderabad II Division, evaded his responsibilities. His failure led to evasion of duty on textile fabrics by the said assesseees.

That the said Sri Ch. Satyanarayana, while functioning in the said capacity during the said period verified the classification list bearing DCL-No.190/88-89 filed by the said, assesseees, wherein the assesseees sought approval of exemption from payment of Central Excise duty under Notification No.253/82-CE,

It is for this reason we have extracted the charges levelled against the applicant.

7. The Charges I and II relate to P.B.C. checks with respect to M/s. Sanghi Textiles Processors Pvt.Ltd. . periodically and he failed to monitor the loss of revenue.

The contention taken by the applicant is that it was absolutely impracticable for any Inspector to conduct periodical P.B.C. checks and that loss of revenue must have been analysed by the Preventive and Investigation Wing of the Central Excise and it was not the duty of the Inspector.

8. A counter has been filed stating that the applicant had pleaded that he had a heavy work load in the Fixed Section; that the said plea was taken note of by the respondents 2 and 3; that the applicant had not at all brought to the notice of his official superiors about the work load he had; that the P.B.C. checks are the mandatory checks; that every Inspector is expected to do the mandatory P.B.C. checks of the factories coming within his jurisdiction; that evaluation of the large quantum turned out by the applicant during his tenure in the Sector does not absolve him of not fulfilling the requisite frequency of P.B.C. checks in the field work connected with assessment and collection of duty; that the unit, namely, M/s.Sanghi Textiles Processors Pvt.Ltd. was paying 6 crores of revenue per annum; that there was nothing on record to show that special efforts had been made to conduct PBC checks of the said unit; that the PBC checks were very important in respect of Production Based Excise Control; that P.B.C. checks ensure non-evasion of duty; that the P.B.C. checks were not conducted by the applicant in any other factory under his charge at the relevant time; that no such loss of revenue had been noticed in those factories

B

Annexure-8. The appellate authority gave personal hearing to the applicant at the time of considering the appeal. The applicant submitted his additional written brief to the appellate authority. A copy of the same is at Annexure-9. The appellate authority by his order dated 11.2.94 disagreed with the disciplinary authority so far as Charge No.III is concerned and agreed with his findings in respect of Charges I and II and imposed a penalty of reduction of pay by one stage from Rs.2300/- to Rs.2240/- in the time scale of Rs.1640-2900/- for one year. Thus the punishment imposed by the disciplinary authority was modified to this extent i.e. by reducing the period of reduction of pay of the applicant from two years to one year.

4. The applicant has filed this O.A. challenging the orders passed by the respondents 2 and 3. The respondent No.3 is the disciplinary authority and the respondent No.2 is the appellate authority.

5. The duration of work of the applicant at Saroornagar Fixed Sector was short; that is to say, the applicant had worked in that Fixed Sector only for about 10 months. Therefore, the applicant has given the details of the work turned out while working as such and the said details are at page 9 of the O.A. It is stated that he had worked more efficiently than any other Inspector could do within that time. The applicant takes the support from the report of the Inquiry Officer.

6. The disciplinary authority disagreed with the findings of the Inquiry Officer so far as charge No.IV was concerned. The appellate authority disagreed with the disciplinary authority so far as Charge No.III was concerned; that means, both the respondents 2 and 3 disagreed with the report of the Inquiry Officer and held that the Charges I and II levelled against the applicant were proved.

R

During course of arguments, the learned counsel for the applicant mainly submitted that the appellate authority failed to consider the work turned out by the applicant and failed to consider whether any Inspector of Central Excise of Hyderabad could be able to conduct P.B.C. checks. In fact the copy of the order of the appellate authority is at pages 93 to 102. In para-8 of the order, the appellate authority has considered the applicant's explanation for not conducting the PBC checks of the unit concerned.

10. With regard to heavy work stated to have turned out by the applicant, we feel that he concentrated on other works except to what he was expected to do. The PBC checks are important matters ^{on} which an Inspector must concentrate. It is an admitted fact that the applicant had not conducted the PBC checks promptly and periodically adhering the rules contained in the Excise Manual. When it is so, his explanation, that his turn-out-of-work was more and therefore, he cannot be blamed for not conducting the PBC checks cannot be accepted. ^{is} His further contention that no Inspector of Central Excise could practically conduct the PBC checks; that means, indirectly the applicant admits that he could not conduct the PBC checks in accordance with the Excise Manual. It is not for him to compare the duties of other Inspectors. If he felt that it was not practicable for him to conduct the PBC checks, then the applicant should have brought to the notice of the higher authorities about the same who could have taken necessary steps or given suitable instructions. He has not explained as to what was the difficulty he faced in conducting the PBC checks of the concerned unit. No doubt, the area of his jurisdiction was covered about 30 Kms., but it does not mean that he can exhibit lackness in performing his duties. If he felt

and that it would be incorrect to link the alleged absence of loss of revenue with the omission to do the PBC checks, but the position in other factories cannot be given as an argument in defence of not conducting the PBC checks; that the respondents 2 and 3 considered the work turned out by him and rightly rejected the same as untenable; that the evasion of duty by the unit had been mainly on account of man-made fabrics with lower rate of duty; that the drop in revenue on man-made fabrics was due to switching in consumer preferences; that the contention of the applicant that no Excise Inspector in Hyderabad had conducted the PBC checks was also turned down by the respondents 2 and 3; that they held that the unit, namely, M/s. Sanghi Textiles Processors Pvt.Ltd. was a major revenue evading unit and that the applicant had failed to conduct the PBC checks and even failed to conduct the prescribed number of PBC checks; that the Inspector, Central Excise, in charge of the Sector is the responsible officer to study and examine the revenue trend and conduct discreet inquiries into the reasons for the fall in revenue or increase in revenue; that the fall in revenue is undoubtedly one of the aspects which was liable to be investigated into by the Sector Officer and the concerned officer cannot be absolved from such responsibility; that even though the applicant visited the said unit, he failed to investigate in detail the reasons for fall in revenue in respect of the man-made fabrics; that the failure to conduct the PBC checks and monitor revenue was serious enough to warrant heavier penalty; that the appellate authority had given every opportunity to the applicant and that there are no reasons to interfere with the impugned orders.

R

that the area of operation of his jurisdiction was not wider and he could not perform the duties strictly in accordance with the Excise Manual, he should have brought the same to the notice of his immediate official superiors and should have taken the assistance of a subordinate official or of an officer of equal rank.

Therefore, in our humble opinion, non-conducting of PBC checks in respect of the concerned unit, namely, M/s. Sanghi Textiles Processors Pvt.Ltd. is clearly a dereliction of duty on the part of the applicant. Both the appellate and the disciplinary authorities have taken these facts into consideration and they have taken a lenient view in imposing the penalty. In fact, the appellate authority has further reduced the penalty imposed on the applicant by the respondent No.3.

11. We went through the order of the appellate authority in detail. In our humble view, the appellate authority has taken all the grounds urged by the applicant in the memorandum of appeal and in the additional written brief submitted by him into consideration. The appellate authority need not pass an order like a judgment. We are convinced that the appellate authority has taken all the grounds into consideration and was even lenient in imposing the penalty. Hence in our humble view, there are absolutely no reasons to interfere with the impugned orders. Therefore, we find no merits in this O.A.

12. Accordingly the O.A. is dismissed. No order as

(S. S. JAI PARAMESHWAR)
MEMBER (JUDICIAL)

(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

CERTIFIED TO BE TRUE COPY of July, 1997.

DJ/31.7.97.

स्वायत्त न्यायाधीश
COURT OFFICER

केन्द्रीय प्रशासनिक अधिकरण

Central Administrative Tribunal