

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 233/02

Misc Petition No.

Contempt Petition No.

Review Application No.

Applicants. J. B. Majumdar

-Vs-

Respondant(s) H.O.I. Gous

Advocate for the Applicant(s) A.S. Chandra, J. Hussain

Advocate for the Respondant(s) C.G.S.C.

Notes of the Registry

Date

Order of the Tribunal

26.7.02

After hearing by Mr. I Hussain
learned counsel for the applicant
and Mr. B.C. Pathak, learned Addl.
C.G.S.C the application is admitted.
Call for records. Returnable by 6
weeks. List on 6.9.02 for orders.

K. C. Sharma

Member

lm

6.9.02

List on 4.10.02 to enable the
the respondents to file written
statement on the prayer made by
Mr. B.C. Pathak, Addl. C.G.S.C.

Vice-Chairman

lm

76576448
22-7-02
1/c. N. S. 24/7/02
P.S.
Shrs. taken
Notices prepared
and sent to D. Section
for issuing of the same
to the respondents
through Regd. post
with A.D. vide D.No-2112
to 2115 Dtd. 7.8.02

5-8-02

4.10.2002

Mr.A.Deb Roy, learned C.G.S.C.

makes a prayer on behalf of Mr.B.C.Pathak for time to file written Statement. Mr.I. Hussain, learned counsel for the applicant has no objection.

Prayer allowed. List the case on 15.11.2002 for order.

K.C. Sharma
Member

No written statement
has been filed.

bb

3/12/02

15/11. In to court sitting at Shillong,
the case is adjourned to 13/12/2002.

A.K. Roy
15/11

13.12.2002

Mr B.C. Pathak, learned Addl. C.G.S.C. submits that he has obtained instructions and he will be filing the written statement. Accordingly he prays for four weeks time to file the written statement. Prayer allowed. List for written statement and further orders on 10.1.2003.

[Signature]
Vice-Chairman.

nkm

10.1.2003

Mr.B.C.Pathak, learned Addl.C.G.S.C.

submits that written statement has been sent for signature and it will be filed ~~at four weeks~~ within four weeks.

Four weeks further time is allowed to the respondents to file written statement. List the case on 7.2.2003 for order.

No written statement
has been filed.

3/2/03

K.C. Sharma
Member

bb

7.2.2003 put up the matter on 21.2.2003 enabling the respondents to file written statement as prayed by Mr.A.K.Chaudhuri, learned Addl.C.G.S.C on behalf of Mr.B.C.Pathak, learned Addl.C.G.S.C.


Vice-Chairman

bb

21.2.2003 It is a pensionary matter and the respondents are yet to file written statement. Let the case be listed for hearing on 4.4.2003.

The respondents may file written statement within three weeks.


10.3.03

Wk Submitted

*My respondent Nos. 1, 2, 3
E4*

bb


Vice-Chairman


4.4.2003 The matter was put up for hearing on today. Mr.B.C.Pathak, learned Addl. C.G.S.C. prayed for 10 days time to produce the connected record.

Prayer allowed. Put up again for hearing on 2.5.2003.


Vice-Chairman


bb

2.5.03

*Adjourned. list again
on 23.5.03 for hearing.*

23.5.2003

List again for hearing on 2.6.03 to enable Mr B.c. Pathak, learned Addl. C.G.S.C. to obtain necessary instructions in the matter.

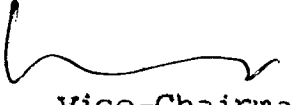

Vice-Chairman

nkm

2.6.03

Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is allowed in terms of the order. No order as to costs.


Vice-Chairman

pg

6.6.03

Copy of the ...
Judgment has been
sent to the office
for issuing the
same to the applicant
as well as to add.
CGSC, for the
Deputy.

11

246

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

✓ O.A. / R.A. No. 233 of 2002.

DATE OF DECISION 2-6-2003.

... Sri Joynath Buragohain APPLICANT(S).

... Mr. I. Hussain ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

... Union of India & Ors. RESPONDENT(S).

... Sri B.C.Pathak, Addl.C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

THE HON'BLE

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

Judgment delivered by Ho'ble Vice-Chairman

Yes

5

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 233 of 2002.

Date of Order : This the 2nd Day of June, 2003.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

Sri Joynath Buragohain,
S/o Late Tikheswar Buragohain,
Bordoloi Nagar,
Tinsukia, Assam.

...Applicant

By Advocate Sri I.Hussain.

- Versus -

1. The Union of India,
through the Secretary,
Ministry of Finance, Govt. of India,
New Delhi.
2. The Chairman,
Central Board of Revenue,
Customs & Central Excise,
New Delhi.
3. The Commissioner,
Central Excise,
Morello Building,
Shillong.
4. Pay & Accounts Officer,
Customs and Central Excise,
Office of the Commissioner
of Central Excise, Morello Building,
Shillong.

... Respondents

By Sri B.C.Pathak, Addl.C.G.S.C.

O R D E R (ORAL)

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 praying for a direction on the respondents to pay his full pension, gratuity and arrear dues etc.

2. The applicant was initially appointed as Sub Inspector of Central Excise under the respondents in 1961. He was promoted as an Inspector in 1972 and later on promoted as Superintendent of Central Excise in the year 1987. The applicant finally attained his superannuation on 31.3.2001. The applicant submitted his pension papers to respondents. ~~No~~ ^{He} retiral benefits were paid to him. He then submitted his representation before the authority on

13.9.2001 followed by another representation dated 15.10.2001 indicating as to non receipt of the pensionary benefits. Finally a copy of the order issued by the Pay and Accounts Officer, Customs and Central Excise among others was also communicated to the applicant vide Memo No.PAO/PR/CE-1259/2001-2002/561-563/341 dated 9.11.2001 which reads as follows :

"In terms of Rule 69 of CCS (Pension) Rules 1972 Sri Joynath Buragohain A.C.(Retd.) is allowed to draw the Provisional Pension @ Rs.5224/- (Rupees Five Thousand Two Hundred & Twenty Four) only per month w.e.f. 01.04.2001 till the conclusion of departmental judiciary proceedings final orders passed by the competent authority."

The applicant thereafter moved this Tribunal seeking for a direction for payment of his full retiral benefits alongwith the arrear dues with interest with effect from 1.4.2001 as well as the gratuity and other retiral benefits by setting aside the communication dated 9.11.2001.

3. I have heard Mr I.Hussain, learned counsel for the applicant and Mr B.C.Pathak, learned Addl.C.G.S.C for the respondents at length. Mr B.C.Pathak, learned Addl.C.G.S.C referred to the written statement and contended that in view of the pendency of the disciplinary proceeding against the applicant full pensionary benefits could not be released but he was provided with provisional pension in terms of Rule 69 of CCS (Pension) Rules. Mr Pathak, the learned Addl.C.G.S.C referring to the communication dated 9.11.2001 contended that justice was done to the applicant. Mr Pathak also referred to para 5 of the written statement and asserted that final payment of GPF was made to the applicant on 15.10.2001 against the bill dated 24.9.2001.

Mr Pathak also referred to the Establishment Order No.77/2001 dated 10/11.5.2001 to show and establish that the applicant was paid the full leave salary of un-utilised Earned Leave for 300 days on the date of retirement on 31.3.2001. Mr I.Hussain, learned counsel for the applicant submitted that he has no instruction in this regard. Mr B.C.Pathak, learned Addl.C.G.S.C in course of hearing also referred to some departmental dispatches in regard to refund claim of some Cigarate units. Mr Pathak particularly referred to a communication dated 10.8.2000 sent by the applicant as an Assistant Commissioner, Central Excise, Jorhat addressed to the Jorhat Commissioner, Central Excise, Shillong for forwarding the application of M/s Kreesna Industries(1) Private Ltd., for refund of Excise duty under Notification dated 8.7.99. Mr Pathak submitted that the said act on the part of the applicant itself amounted to misconduct and in that view of the matter departmental proceeding was initiated and the respondents thought it proper not ^{to} release the full pensionary benefits.

4. I have given my anxious consideration on the matter. The grant of pension is not a bounty but it is a statutory right of a Government officer to earn the same unless the same is withheld in accordance with law. Rule 9 of the CCS (Pension) Rules 1972 has empowered the authority to withhold the pension including gratuity in the facts and circumstances set out in Rule 9. The authority is entrusted with the power in withholding pension or gratuity or withdraw the pension in full or in part, whether permanently or for a specified period and recover whole or part of any pecuniary loss caused to the Government, if the pensioner is found guilty of grave misconduct or negligence

during the period of service. As per the statutory scheme such action can be taken only in case of investiture of a departmental proceeding. The departmental proceeding is required to be instituted before the retirement of the officer but in some cases power is conferred on the authority and in some cases with the sanction of the President. Under sub-rule 4 of Rule 9 the provisional pension as provided in Rule 69 can only be sanctioned only whom a departmental or judicial proceeding is instituted and/or pending. No gratuity is to be paid to the Government servant until conclusion of the departmental proceeding and no final order shall be issued as per Rule 69. All these envisages pendency of a departmental proceeding referred to and the draft charge was forwarded to the Director General, Vigilance, New Delhi vide communication dated 17.4.2003. All these indicated that no departmental proceeding was initiated so far. In this situation the action of the respondents for withholding the pensionary benefit is not justified. The very exercise of power under Rule 69 read with Rule 9 is subject to the conditions cited, it is not an absolute or arbitrary power. It can only be taken aid of in the specified circumstances. In the absence of any disciplinary proceeding the impugned act of the respondents in withholding the pension permanently or for a specified period is not warranted under the law. In the circumstances the action of the respondents for withholding the pensionary benefits is not justified in law (Ref : D.V.Kapoor vs. Union of India & Ors. AIR 1990 S.C 1923).

For all the reasons stated above, the application is allowed. The respondents are directed to release the full pensionary benefits forthwith with interest of Rs.15% p.a. on or from 1.8.2001 till the payment is made.

The application is allowed to the extent indicated.
There shall, however, be no order as to costs.



(D.N. CHOWDHURY)
VICE CHAIRMAN

26/7/02

23 JUN 2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH, GUWAHATI

(An application under Section 19 of the
Central Administrative Tribunal
Act, 1985)

ORIGINAL APPLICATION NO. 233/2002

Sri Joynath Buragohain

.... Applicant.

-Vs.-

The Union of India & Ors.

.... Respondents.

I N D E X

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1.	Memo of Application.	1 to 11
2.	<u>Annexure No. 1 and 2</u> : Typed copies of represent- ation dtd. 13.9.2001 and 15 15.10.2001.	12 to 13
3.	<u>Annexure No. 3</u> : copy of the order dated 9.11.01 of respondent No. 4 sanctioning only provisional pension only while holding up other retired benefits.	14

Vakalatnama.

Filed by

Iqbal Hussain

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

(An Application under Section 19 of
the Central Administrative
Tribunal Act, 1955)

*Filed by the Applicant
Sri Joynath Buragohain
through
Sudip Kumar
Advocate
23.7.2002*

ORIGINAL APPLICATION NO. 233/2002

BETWEEN

Sri Joynath Buragohain

... Applicant.

-Versus-

The Union of India & Ors.

... Respondents.

DETAILS OF THE APPLICANT :

- | | |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------|
| 1. Name and Address of
the Applicant | : Sri Joynath Buragohain
S/o. Late Tikheswar
Buragohain,
R/o. Bordoloi Nagar,
Tinsukia, Assam. |
| 2. Designation | : Assistant Commissioner
Central Excise (Retd.) |

OPARTICULARS.....

g/v

PARTICULARS OF RESPONDENTS :

- Name and Designation of the Respondents : 1. The Union of India, through the Secretary Ministry of Finance, Govt. of India.
2. The Chairman, Central Board of Revenue, Customs & Central Excise, New Delhi.
3. The Commissioner, Central Excise, Morello Building, Shillong.
4. Pay and Accounts Officer, Customs and Central Excise, Office of the Commissioner of Central Excise, Morello Building, Shillong.

I. PARTICULARS OF ORDERS AGAINST WHICH APPLICATION IS MADE :

1. Order under Memo No. PAO/PR/CE/1259/20021-2002/561/579 dated 9-11-01 of pay and Accounts Officer (Respondent No.4) communicated to the applicant by the Administrative Officer, Central Excise, Jorhat Division vide No. 11(25)7/ET-2/2001/7658 dated 28.11.2002.

2. Denial....

2. Denial of retirement benefit to the applicant i.e. regular pension, Gratuity, Group Insurance, Leave salary and commuted Pension amount.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the application is within the jurisdiction of this Hon'ble Tribunal.

3. L I M I T A T I O N :

The applicant further declares that the application is filed before this Hon'ble Tribunal within time limit prescribed under Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1. The humble applicant is a citizen of India and as such is entitled to all the rights and privileges prescribed under the Constitution of India and other laws of the country.

4.2. That the applicant states that initially he was appointed as a Sub Inspector of Central Excise in the year 1961. Thereafter he served in various places on transfer and was promoted to Inspector in 1972 and to the post of Superintendent in the year 1987. By dint of his sincere service, he was promoted to the

post....

Wth

post of Assistant Commissioner in the year 1997 and was posted at Bolpur (West Bengal). Thereafter, he was transferred to Cooh Bihat and ultimately to Jorhat (Assam) in the month of November 1999.

Wherefrom he retired in the same capacity w.e.f.

31.3.2001 on superannuation. He also submitted his pension paper/documents to the Respondents in time for grant of retirement benefits in time.

4.3. That, the applicant states that, as his retirement benefits including pension etc. were not paid in time, he submitted representation dated 13.9.2001 to the Respondent No.3 with a prayer of payment of his retirement benefits. As no action was taken for payment of retirement benefit even after receipt of the representation dated 13.9.2001, he submitted another representation dated 15.10.2001 to the Respondent No.3 informing him about non receipt of the retirement benefits and requested the Commissioner to intimate him the reasons for non payment of the retirement benefits.

The typed copies of representation dated 13.9.2001 and 15.10.01 submitted to Respondent No.3 are annexed as Annexure Nos 1 and 2 respectively.

4.4. That...

Wtr

4.4. That, the applicant states that, thereafter his amount pertaining to Provident Fund only was paid to him. However, the Respondent No. 4 on the advice of Respondent No.3 vide an order dated 9.11.2001 allowed the applicant to draw Provisional Pension only w.e.f. 1.4.2001 in terms of Rule 69 of CCS(Pension) Rules 1972. In the said order it was also stated that, the provisional Pension will be paid till conclusion of departmental judiciary proceedings² final order passed by the competent authority.

The copy of the order dated 9.11.2001 of Respondent No.4 sanctioning ~~only~~ provisional pension only while holding up other retired benefits is annexed as Annexure No. 3.

4.5. That the applicant states that, couple of ~~year~~ years back, the Govt. of India in consultation with the Govt. of Assam decided to exempt some industries set up in Assam (as a backward area) from the purview of Central Tax and accordingly many industries particularly Cigarette manufacturing units were set up by number of companies in Assam to avail the tax benefits. One such unit was also established near Jorhat under the jurisdiction of Assistant Commissioner, Central Excise, Jorhat. It is pertinent to mention that, the applicant was serving as

Assistant....

Assistant Commissioner at the relevant time at Jorhat and he looked after the affairs of the newly established units also.

4.6. That the applicant states that, while he was serving at Jorhat, he refunded excise duty to one Cigarette manufacturing company as per policy decisions of the Governments and there was no illegality in the process. But the Applicant was surprised to receive a letter dated 3.10.2000 from the Respondent No.3 asked the applicant to submit his explanations as regards circumstances while sanctioning refund to the Cigarette company. Thereafter he submitted his explanation dated 9.10.2000 explaining the reasons along with the relevant documents to the respondent No.3. He also stated he had made the refund as per earlier direction of the Commissioner in this regard and as per Government policy in this regard.

4.7. That the applicant states that, after submission of his explanation neither any further action nor any show cause notice etc. was even served on him and in the meantime he has retired on superannuation. As there was no illegality or improper action taken by the applicant, the Respondents has not been able to proceeding with the matter further. But they are unnecessary withholding the pensionary benefit in the pretext of some department^{al} action. It is pertinent to mention that, the respondents have yet to issue any show cause notice or

frame...

WV

frame any definite charge but are harassing the applicant on one pretext or another and has deprived of his retired^{he} benefits and is losing interest on the same which he could have earned from deposits in Bank. Because of their action the applicant is facing untold financial hardship to maintain his family.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

- i) For the impugned order issued by the Respondent No.4 withholding the retirement benefits and allowing provisional pension only is illegal, improper and against the justice and fair play.
- ii) For that, the Respondents after calling for explanation from the applicants are setting over the matter since October, 2000 and have not proceeded further but made the applicant suffer ~~as~~ the pretext of some department proceeding details of which if any has not been communicated to the applicant as yet. This action of the Respondents is keeping the applicant with an uncertain future even after his retirement is illegal, improper and against the rules and procedure in force and as such is liable to be set aside and quashed.
- iii) For that, the action of the Respondents in withholding the retirement benefits without any enquiry whatsoever is highly improper and illegal.

The...

Wtr

The applicant has a right to receive his benefits after serving the department for about 40 years without any adverse remarks in his service career. The Respondents cannot take any action in this regard without holding the applicant guilty through due procedure of law.

iv) For that, the respondents cannot keep any matter pending for an indefinite period more particularly in matters relating to a retired employee and he should not be allowed to suffer for no fault of his own. The applicant had done nothing contrary to the rules and procedure and decisions of Governments and whatever he did there was nothing irregular. The respondent also have failed to prove anything against the applicant and they have got no right to ~~wh~~ withhold the retirement benefits for an indefinite period according to their whims and fancies. As such this Hon'ble Tribunal may be pleased to interfere into the matter and direct the Respondent to sanction and pay all his retirement benefits due to him.

v) For that in any view of the matter the impugned order is liable to be set aside and quashed and the Respondents may be directed to sanction and pay his full retirement benefits as per rule.

6. DETAILS OF.....

Wt

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant filed to representations dt. 13.9.2001 and 15.10.2001 to the Respondent No.3 with a prayer for his retirement benefit.

7. MATTERS NOT PENDING IN ANY OTHER COURT OR TRIBUNAL:

That the applicant declares that, no suit or application is pending in any court or Tribunal.

8. RELIEF SOUGHT FOR : -

In view of the facts and circumstances, narrated above, the applicant prays for the following relief.

- 1) That the applicant prays for a direction to the respondents to sanction and pay his full and regular pension, gratuity, group Insurance, leave salary and commuted pension amount including all arrear dues with interest @ 16% per annum w.e.f. 1.4.2001 till the same is paid within specified period.
- ii) That the applicant prays that this Hon'ble Tribunal would be pleased to hold that the impugned action of the concerned respondent authorities in not paying the regular pension, gratuity, Group Insurance, leave salary and commuted pension including all arrear dues is bad and illegal and also to hold that the applicant is entitled for the same immediately on retirement and the same cannot be withheld in the name

JWT

of non-existence judicial proceedings as alleged in the order dt. 9.11.2001 (vide Annexure No.3) and also to hold that the applicant is entitled for regular pension and other retiral benefits.

9. INTERIM RELIEF IF ANY PRAYED FOR :

That yye applicant prays that pending disposal of this application the respondents may be directed to pay the regular pension and other retiral benefits to the applicant immediately in the interest of justice.

10. DETAILS OF POSTAL ORDER:

No. of I.P.O. : 76576448

Value of I.P.O. : Rs.50.00

Name of P.O. where
from IPO is issued : G.P.O. Guwahati.

Issued in favour of: Registrar,
Central Administrative
Tribunal.

11. LIST OF ENCLOSURES:

As above.

Verification

Wt

V E R I F I C A T I O N

I, Sri Joynath Buragohain, Son of late Tikheswar Buragohain, aged about 60 years, resident of Tinsukia, Assam, do hereby solemnly affirm and declare and verify that the statements made in paragraphs 4.1, 4.2, 4.3, 4.4, 4.6, 4.7, 4.9, 4.14, 4.15 and 4.16 are true to my knowledge and those made in paragraphs 4.5, 4.8, 4.10, 4.11, 4.12, 4.13 are true to my information being matters of records which I believe to be true and those made in the instant application are my humble submissions before this Hon'ble Tribunal.

And I sign y this verification on this the 23rd day of July, 2002 at Guwahati.

Joynath Buragohain
DECLARANT.

Annexure-1.

To

The Commissioner (N.E.R.) By name.

Central Excise, Shillong.

Sub :- Non receipt of pension/ leave salary/
Gratuity/GPF /etc.

Sir,

It is going to be completed 6(six) months that I have been retired from my service. No payment has been made to me till now in respect of the subject cited above.

In this regards I am to inform you that my family is suffering a lots of hardship for want of money. I, therefore, request you to kindly to send

This act of your kindness, I shall remain ever grateful to you.

Thanking you,

Yours faithfully,

Asstt. Commissioner (EX. (RETD)).

Jorhat.

...

RECEIVED
20/03/2010

Annexure- 2.

To

The Commissioner (NER) By name.

Central Excise, Shillong,

Meghalaya.

Sub :- Non receipt of Pension / leave salary/
Gratuity/GPF /etc.

Sir,

Kindly refer to my letter dated 23/09/2001

I am to inform you once again that I have not received any amount of money from your office in respect of my retirement. I therefore request you kindly to intimate me why I have not been paid my retirement benefit till today.

An early reply is solicited.

Yours faithfully,

sd/-

15.10.2001.

(G.N. Buragohain).

Asstt. Commissioner,

CEX (retd).

Jorhat, Assam.

Present postal address :-

...

TESTED
23/10/01

ST-1

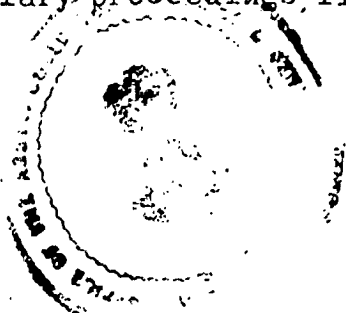
ORDER

-124

ANX No 3

M

In terms of Rule 69 of CCS (Pension) Rules 1972 Sri Joynath Buragohain A.C. (Retd) is allowed to draw the Provisional Pension @ Rs. 5224/- (Rupees Five Thousand Two Hundred & Twenty Four) only per month w.e.f. 01.04.2001. till the conclusion of departmental Judicial proceedings, final orders passed by the competent authority.

1017
13.12.01

Pay and Accounts Officer
Customs and Central Excise
:: Shillong;

MEMO NO. PAO/PR/CE-1259/20024-2002/561-563/5.17

Dt:-- 9.11.01

Copy forwarded to:-

- 1) To the Assistant Commissioner, Central Excise, Jorhat with the request to furnish a bill to draw & disburse the provisional payment in respect of Sri Joynath Buragohain A.C. (Retd). He is entitled to receive DA @ Rs. 41% of the provisional pension (Arrear bill should be prepared from 01.04.2001 and as per Rule 369 of Central Treasury Rules (Volume 1), the arrears of pension exceeding Rs. 10000/- is to be paid with the sanction of the Head of the department of the Office).
- 2) Additional Commissioner P&V Customs & Central Excise, Shillong.
- 3) Sri Joynath Buragohain, Bordoloinagar, P.O. & Dist Tinsukia, Assam He is requested to submit an option for fixed medical allowances of Rs. 100/- to A.O Central Excise, Jorhat from 1.4.2001 and they will prepare bill accordingly.

sd/-
Pay & Accounts Officer,
Customs & Central Excise
Shillong::

C.No. 11(25) 7/E7-1/2001 7645

Dt:-- 20/11/01

Copy forwarded for information & necessary action to -

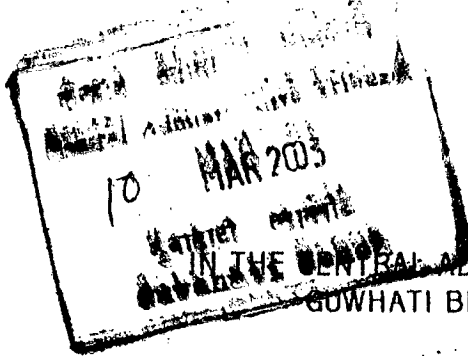
1. The bill branch (in duplicate) c.f.v Jorhat.

2. Sri Joynath Buragohain A.C. (Retd) Bordoloinagar
Tinsukia P.O. Tinsukia Dist. Tinsukia Assam.

TESTED
ADVOCATE

Administration
Central Excise
Jorhat Division

प्रशासनिक अधिकारी
केंद्रिय उत्पाद शुल्क
जोहट मंडल



-VS-

Filed by:
B. C. Pathak
10/3/03
25
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

OA No. 233/2002

Shri Joynath Buragohain

... Applicant

- Vs -

Union of India & Others

... Respondents

(The written statements of the respondents No. 1,2,3 & 4)

The written statements of the above noted respondents are as follows :

- 1 That a copy of the OA No. 233/2002 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.
3. That with regard to the statements made in para 1,2,3 and 4.1 the respondents have no comments to offer.
4. That with regard to the statements made in para 4.2 and 4.3, the respondents have no comments these being matter of facts.
5. That with regard to the statements made in para 4.4 and 4.5 , the respondents state that due to pendency of disciplinary proceedings against the applicant, he was provided with provisional pension under Rule 69 of the C.C.S. (Pension) Rules, 1972. This fact is very much clear from the

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order dated 9.11.2001 as in Annexure-3 of the application. The applicant is very much aware about it as he was duly served a copy of the said order. The final payment of GPF to the tune of Rs. 5,77,317/- has been made to the applicant in 15.10.2001 against the Bill No. 274/FP/GPF/01-02 dated 24.9.2001.

6. That with regard to the statements made in para 4.6,4.7 the respondents state that vide letter dated 2.8.2002, all the Assistant Commissioner of Central Excise under Shillong Commissionerate were directed to keep all refund claims in respect of Cigarette units in abeyance, as per Minutes of Meeting with the Chairman, CBEC and the Commissioner, Central Excise, Shillong on 25.7.2002.

(Annexure - I)

Vide letter dated 10.8.2000, the Assistant Commissioner, Jorhat sought for passing of necessary order for release of refunds amount in abeyance stating that M/s Kreesna Industries (I) Pvt. Ltd. Has already fulfilled all the conditions of State Government as well as Central Government Authorities as required.

(Annexure - II)

Vide letter dated 23.8.2000, clarification was sought from the Director, directorate of Industries & Commerce, Government of Assam regarding M/s Kreesna (I) Pvt. Ltd.

(Annexure - III)

Vide letter 22.8.2000, Board further directed to keep all refund claims in abeyance, in respect of Cigarette units.

(Annexure - IV)

Vide letter dated 23.8.2000, the Assistant Commissioner, Jorhat informed the Director, Directorate of Industries & Commerce, Government of Assam that he has looked into the matter personally and found the unit eligible for refund from Central Excise point of view as well as per the norms intimated by them.

(Annexure - V)

Vide letter dated 25.8.2000, the Assistant Commissioner, Jorhat sought advice if adjustment as prayed for by the Unit is available under para 2(c) of the impugned Notification for adjustment of refund claims of July, 2000 with payment of duty for the first fortnight of August, 2000.

(Annexure - VI)

Vide letter dated 23.8.2000, the Assistant Commissioner, Jorhat informed the said assessee that their refund cannot be sanctioned as prayed for at the amount as directed by Hqrs. Office, Shillong.

(Annexure - VII)

Vide letter dated 29.8.2000, the Assistant Commissioner, Jorhat stated that on 12.8.2000, the Joint Commissioner (Tech), Central Excise, Shillong instructed over phone to keep the refund in question pending for the time being. He further stated that the Party's Lawyer has issued a notice demanding refund of the amount in question within 2.9.2000. He further informed that unless specific order is communicated, the refund shall be released by 1.9.2000 to avoid litigation in the Court of Law for no reason.

(Annexure - VIII)

Vide letter 12.9.2000, the Director, Directorate of Industries & Commerce, Government of Assam informed that since the PMT of M/s Kreesna Industries (I) Pvt. Ltd. was issued without prior approval of the State Government, the General Manager, DICC has been asked to take back the

PMT issued without any Authority to the said unit. The matter of issue of PMT to the Unit is under examination at present.

(Annexure - IX)

Vide letter dated 14.9.2000, the Assistant Commissioner of Central Excise were further instructed to keep the refund in abeyance.

(Annexure - X)

Vide letter dated 19.9.2000, the Assistant Commissioner Of Central Excise, Jorhat stated that in absence of information that the PMT of the Unit is under consideration of taking back, the refunds were found to be rightly sanctioned.

(Annexure - XI)

Hence, it may be noted that no direction has been given by the Commissioner of Central Excise, Shillong for release of any refund claims in respect of Cigarette Units which are kept in abeyance with effect from July, 2000.

The refund so sanctioned by the Assistant Commissioner of Central Excise, Jorhat is on his own judgement and decision and is in violation of Standing Executive Instruction.

7. That with regard to the statements made in para 5(i) to 5(v), the respondents state that in the instant case, the board is the Competent Authority to withhold pension and other retirement benefits available to a Group 'A' Officer. The case of Shri J. Buragohain, A.C. (Retd.) was remanded to the Ministry considering the gravity of charges which is beyond the jurisdiction of the Cadre Control Authority.

The action of the Respondent was reasonable decision as to the conduct of the appellant related to loss of revenue to the Government. The present financial constraints of the applicant as contended is not severe having regard to the charges and the decision was not harsh as the matter was remanded by this office to the CBEC, New Delhi for an objective assessment of the Competent Authority to the quantum punishment proposed to be imposed. As stated above and under the facts and circumstances of the case the grounds shown by the applicant are no grounds in the eye of law and hence the application is liable to be dismissed with cost.

8. That with regard to the statements made in para 6 and 7, the respondents have no comments.

9. That with regard to the relief sought for as in para 8.1, 8.11 and 9, the respondents state that in view of the facts and circumstances of the case and the provisions of law, the applicant is not entitled to any relief whatsoever and the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties, perusing the records also be pleased to dismiss the application with cost.

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VERIFICATION

I, Shri Anwar Hussain, presently working as the Deputy Commissioner in the office of the Central Excise, Guwahati and taking steps in court cases, being competent and duly authorized to sign this verification, do solemnly affirm and state that the statements made in para 4 to 5, 7, 8 and 9 are true to my knowledge and belief, those made in para - 6 - being matter of records, are true to my information derived therefrom and the rest are my humble submission in the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification in this 10th day of March, 2003 at Guwahati.

Anwar Hussain
DEPONENT
(A. HUSSAIN)
Deputy Commissioner
CENTRAL EXCISE
GUWAHATI DIVISION

Annexure - 1
FAX / SPEED POST

MOST IMMEDIATE



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

ANNEXURE : I

**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NORTH EASTERN REGION : SHILLONG (MEGHALAYA).**

C.NO.IV-16/42/TECH/99/Pl-I

Dated: 01-08-2000.

To,

The Assistant Commissioner / Deputy Commissioner (BY NAME),
Central Excise Division,

Subject: Pursuance of the Meeting of the Commissioner of Central Excise, Shillong with the Chairman and Member, CBEC held on 25-07-2000 at the Chamber of the Chairman, CBEC in view of letters issued by DIC, Government of Assam for denying the benefits of Notification No.32/99-CE dated 08-07-99 to Cigarette Manufacturing Units - Regarding.

Sir,

On the above mentioned context, it has been instructed by the Commissioner of Central Excise, Shillong (Camp: New Delhi) that the following steps/actions are to be initiated immediately in respect of Cigarette Manufacturing Units under your Jurisdiction who are availing the benefits of Notification No. 32/99-CE dated 8-7-99 :

- (a) Clearances are not to be stopped.
- ✓(b) Refunds are to be kept in abeyance till the matter is resolved with the State Government. The concerned Units have verbally informed that they would resolve the issue
- (c) The Assistant Commissioner, Central Excise, Guwahati should try to find out, if there is any result, positive or otherwise, based on which further action will be contemplated. He should submit his report at the earliest possible time to the Joint Commissioner (Tech), Central Excise, Shillong.
- (d) All the concerned Range Offices should have copies of applications along with relevant accompanying documents like AR-1, etc., submitted by the respective Units to the Directorate of Industries requesting for Permanent Registration in terms of Clause (3) of the Provisional Registration.
- (e) Any counter-reaction of the State Government (in writing) in response to this Office's replies to their (DIC) letters should be intimated to the Joint Commissioner (Tech), Central Excise, Shillong immediately.
- (f) In case any Unit goes to Court, the same should be informed to the Joint Commissioner (Tech), Central Excise, Shillong with implications.

Further, the Commissioner of Central Excise, Shillong has directed that necessary action should be initiated against the Iron And Steel Units for recovery of dues not covered by High Court as pointed out in the Legal Branch File.

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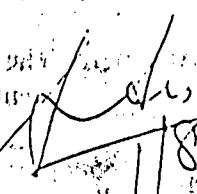
It is further directed to request you to take immediate necessary action for recovery of duties dues. Action under Rule 230 of the Central Excise Rules, 1944 may be initiated immediately.

Moreover, you are also requested to furnish the names of remote Ranges/Units under your Jurisdiction for the purpose of receiving Refund Applications from the assessees who are availing the benefits under Notification No.32/99-CE & 33/99-CE both dated 08-07-99 as decided in the meeting held on 29-07-2000 at Guwahati with the Assistant/Deputy Commissioners and their respective Superintendent (Tech), immediately by Return FAX.

It is once again reiterated that the Commissioner of Central Excise, Shillong has directed to inform all the concerned divisional Assistant/Deputy Commissioners to take immediate necessary actions as stated above.

Yours faithfully,

o/c


(SUKANTA DAS)
SUPERINTENDENT (TECH)
CENTRAL EXCISE SHILLONG.

OFFICE OF THE ASS.

C.No. V(18)75/ACJ/REF/2000/57

To

The Commissioner,
Central Excise,
Shillong.

ANNEXURE - II
NER, CENTRAL EXCISE : JORHAT

Dated. 10.08.2000

ANNEXURE : II

Sir,

Subject :- Refund in respect of Cigarettee¹
Manufacturers - C/Regarding.

I have to forward herewith a prayer submitted by M/s Kreesna Industries (I) Pvt. Ltd., Industrial Estate, Cinnamara, Jorhat in respect of refund of Excise duty under Notification No. 32/99-CE dated 08.07.99. The same is self explanatory.

I have to mention here that the said unit has already fulfilled all the conditions of State Government as well as Central Government authorities as required. As such, necessary order may be passed from your end regarding release of the refund which was ordered for 'Kept in abeyance' vide letter C.No. IV-16/42/TECH/99/Pt-I dated 01.03.2000 sent through FAX.

Yours faithfully,

Encl :- 1 (One)

/BT10082K/-

(J.M. Buragohain)
Assistant Commissioner,
Central Excise, Jorhat.

Works : Industrial Estate, Cinnamara, Jorhat - 8, 736040.

Works : Industrial Estate, Cinnamara, Jorhat - 8, 736040

Yours faithfully,

[Signature]

Government of India
Ministry of Finance
Department of Revenue

ANNEXURE : III

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NORTH EASTERN REGION : MORELLOW COMPOUND : SHILLONG - 1

Dated: 23-08-2000.

C.NO. IV-16/17/TECH/2000

To,

The Director,
Directorate of Industries and Commerce,
Udyog Bhawan, Bamunimaidan,
Guwahati - 21, Assam.

Subject : Exemption of Excise duty and refund thereof.

Reference: (1) Letter No.DI(V)(R)10/2000/14622 dated 11-08-2000.
(2) Letter No.DI(V)(R)128/99/47/8802-8815 dated 25-05-2000.

Sir,

With reference to the above stated references on the above cited subject, your attention is brought to the case of M/s. Kreesna Industries (I) Pvt. Ltd., Jorhat.

Under reference no. (1) above, you have stated that the application for PMT Registration in respect of the above said Unit is under examination for consideration of issuing PMT Registration at present. (Copy enclosed).

Whereas vide letter no.DIC/JOR/G-24/96/853(A) dated 30-06-2000, the said Unit had already been issued "Certificate" under SSI Registration No. 02/16/01501/PMT/SSI dated 19-06-2000 for manufacturing Cigarette. Moreover, "Permanent Registration Certificate" as SSI Unit under Registration No.021601501 PMT/SSI dated 19-06-2000 had also been already issued by your Department. (Copy enclosed)

It may further be mentioned that "Report of Joint Capacity Assessment" had already been issued under the signature of both the Dy. Director, SISI, Guwahati and the Addl. Director of Industries & Commerce, Upper Assam on 29-05-2000. (Copy enclosed)

Further, "Employment Certificate" had also been already issued to the above said Unit by the Director, Employment & Craftsmen Training, Guwahati vide letter no: DMP(CO)46/99/10,027 dated 02-08-2000. (Copy enclosed)

In view of the above facts, it has been observed that the said Unit i.e., M/s. Kreesna Industries (I) Pvt. Ltd., Jorhat had observed all the necessary procedural requirements as laid down by the Ministry of Industry, which had also been highlighted under your letter under reference no. (2) above.

Hence, you are requested to clarify the matter latest by the 28th August, 2000 so that the refund claims may be processed at this end.

Also, in view of Notification no.5(1)/92-SSI BD. Dated 20-07-92 (Copy enclosed), there is no doubt regarding the validity of the PMT registration Certificate.

Yours sincerely,

(T. HAOKIP)
JOINT COMMISSIONER (TEC.)
CENTRAL EXCISE SHILLONG

ANNEXURE - IV

ANNEXURE : IV

F.No.332/36/200-TRU
Ministry of Finance
Department of Revenue

New Delhi, the 22nd August, 2000

To

The Commissioner of Central Excise,
Shillong

Sir,

I am directed to say that, as you are aware, certain companies have set up cigarette manufacturing facilities in North East and they are claiming advantage of excise duty exemption. It seems that several of these units have only provisional ISI registration certificate from the Department of Industries of the State Government and they do not have the license from the Ministry of Industries. You are requested to kindly verify the manufacturing facility of each of these units and send a report with regard to the facilities they have set up. It is also desired that the refund claims should be more carefully scrutinized by ensuring that cigarettes have actually been manufactured and, for the present, the sanction of the refund claims may be kept pending.

Yours faithfully,

(Vivek Johni)

Deputy Secretary to the Govt. of India

JOINT COMMISSIONER, EXCISE
CENTRAL EXCISE, SHILLONG

Dated. 23.8.2000

ANNEXURE - V

The Director,
Directorate of Industries & Commerce,
Assam, GUWAHATI - 21.

ANNEXURE : V

Subject :- Exemption of Excise duty and Refund thereof
to Cigarette manufacturing SSI unit : C/R.

Please refer to your letter under Ref. No. DI(V)(R)/120/
99/47/0002-8015 dated 25.05.2000 on the above subject.

I have to inform you the following against your query
made vide your letter under reference :-

(a) M/S Krocana Industries (I) Pvt. Ltd., Industrial
Estate, Cinnamara, Jorhat has been found granted PMT
on fulfilment of required formalities by the proper
office of DIC, Jorhat.

(b) The copy of the Certificate of Capacity assessment
has been found duly issued by the concern authority by
the above party.

(c) Copies of the arrival/utilisation report of the
party is enclosed.

(d) A copy of the local employment certificate is
enclosed.

(e) Copies of the monthly production/clearance report
submitted to the DI/DICC are enclosed.

I, therefore, inform you that the matter has been looked
into personally and found the unit eligible for refund from
the Central Excise point of view as well as as per the norms
intimated by you vide your letter under reference.

Yours faithfully,

all-

(J.N. Buragohain),
Assistant Commissioner,
Central Excise, Jorhat.

C.No. V(18)75/ACJ/INST/REF/2K/2329-31

Dated. 23.8.2000.

Copy to :-

1. The Joint Commissioner (Tech.), Central Excise, Shillong
for information and necessary action.

2. The Development Commissioner, SSI, Nirmal Bhawan, New
Delhi-11 for information with reference to the Director of
Industries & Commerce, Assam, Guwahati -21 letter Ref. No.
DI(V)(R)120/99/47/0002-8015 dated 25.5.2000.

3. The Assistant Commissioner, Central Excise, Guwahati,
for information and necessary action with reference to the
Hqs. letter under C.No. IV-16/42/TECH/99/Pt.1/16742-50 dated
02.08.2000.

/DI23082K/-

23/8/2000
(J.N. Buragohain),
Assistant Commissioner,
Central Excise, Jorhat.

10-13-
4/9/24
Annexum - VI
24-
ANNEXURE: VI

OFFICE OF THE ASSISTANT COMMISSIONER, CENTRAL EXCISE : JORHAT.

C.No. V(10)75/INST/ACJ/REF/2K/2432

Dated. 24.8.2000.

To

The Joint Commissioner (Tech.),
Central Excise (Hqrs.),
Shillong.

Sir,

Subject :- Refund of duty for the month of July, 2000
as per provision of the Notification No.
32/99-CE dated 00.07.99 : C/R.

I have to forward herewith the letter under Ref. No.
KI/SPL/G&E/2000-01 dated 23.08.2000 submitted by M/S J. Sarna
Industries (I) Pvt. Ltd., Industrial Estate, Cinnamara, Jorhat
which is self explanatory.

You are requested to advise the undersigned if the
adjustment as prayed for is available. Also, please advise
whether Para 2(c) of the Notification No. 32/99-CE dated
00.07.99 provides any scope for such adjustment.

Yours faithfully,

Encls :- as above.

(J.N. Buragohain),
Assistant Commissioner.
Central Excise, Jorhat.

Sir: Jorhat
Ld
24/9/2000

Works : Industrial Estate, Cinnamara, Jorhat - B. 02300401

Works : Industrial Estate, Cinnamara, Jorhat - B. 02300401

OFFICE OF THE ASSISTANT COMMISSIONER, CENTRAL EXCISE, JORHAT.

C.No. V(13)75/ACJ/INST/REF/2000/

Dated. 09.08.2000.

To

S/S Sanyam Industries (I) Pvt. Ltd.,
Industrial Estate, Cannonpara,
Jorhat.

ANNEXURE I

Dear Sir,

Subject :- Refund for the month of July/2000 as
per provision of the Notification No.
32/92-CE dated 08.07.99 ; C/R.

Please refer to your letters under Ref. Nos. 14/CAC/
12/2000-01 dated 9.8.2000, KI/CEA/SPL/2000201 dated 10.8.2000
and KI/CEA/SPL/2000-01 dated 16.08.2000 respectively on the
above subject.

Your refund cannot be sanctioned as prayed for at this
moment as directed by the Hqs. office Shillong. This is for
your information.

Yours faithfully,

(J.N. Saragachari),
Assistant Commissioner,
Central Excise, Jorhat.

C.No. V(13)75/ACJ/INST/REF/2K/ 2327

Dated. 23.08.2000.

Copy forwarded to the Joint Commissioner (Tech., Centre
Excise, Shillong for information. He is hereby informed with
reference to the letter under C.No. IV-16/42/Tech/99/Pt. I/16742-
58 dated 01.09.2000 that -

(a) Clearances are not stopped in respect of the
subject assessee,

(b) Refunds are kept in abeyance as directed by the
Commissioner, Central Excise, Shillong.

(c) Action if any, as mentioned in the letter is not
known to the Asstt. Commissioner, Central
Excise, Guwahati. Also no communication whatsoever is
received from the Assistant Commissioner, Central Excise,
Guwahati.

(d) No action is necessary as the PFI (Permanent
Registration of ISI) in terms of Clause 3 of the
Provisional Registration was already issued to the
Assessee by the SIC, Jorhat as required.

(e) Question of counter-vention of the State Govt.
does not arise as the PFI was already issued in this
respect on fulfilment of all the necessary requirements
by the assessee.

(f) Nothing known till date.

Contd.... P/- 2/-

He is therefore requested to confirm whether the payment of refund on the facts and ground stated above be continued to be "kept in abeyance". His attention is drawn to this office letter under C.No. V(10)75/ACJ/HSI RCF/2K/40/ and 57 dated 06.08.2000 and 10.08.2000 and even No. 2141 dated 11.8.2000 and party's letter under Ref. No. KI/CCE/SPL/2000-01 dated 14.08.2000 and Ref. No. KI/CCE/SPL/2000-01 dated 16.08.2000 addressed to the Assistant Commissioner, Central Excise, Jorhat are enclosed for ready reference. *Respectively*

(J.N. Buragohain),
Assistant Commissioner,
Central Excise, Jorhat

Annexure - VIII

-16-

OFFICE OF THE ASSISTANT COMMISSIONER,
CENTRAL EXCISE, JORHAT.

ANNEXURE : VIII

C.No. V(10)75/ACJ/INST/REF/RK/ 24.8.00

Dated: 29-8-00

To,

The Joint Commissioner (Tech),
Central Excise,
Shillong.

Sir,

Subject :- Refund of Excise duty on Cigarettes : C/R.

Please refer to this office letters of even Nos. 49 dated 8.8.2000, Endt. Letters of even Nos 2327, 2329 both dated 23.8.2000 and FAX dated 24.8.2000 on the above subject. Also, please refer to the Party's letters under Ref. Nos. KI/C&E/19/2000-01, KI/C&E/Sp/2000-01 and KI/C&E/Sp/2000-01 dated 9.8.2000, 14.8.2000 and 16.8.2000 respectively forwarded to you.

The Original letter issued by the Superintendent (Tech), Central Excise, Shillong under C.No. IV-10412/TECH/DO/Pt.-I/16742-50 dated 2.8.2000 referring the meeting between the Commissioner, Central Excise, Shillong (Camp at Delhi) and The Chairman and The Member of CBEC wherein it was referred that the refund to be kept in abeyance in view of the DIC, Govt. of Assam's letter which was meant for the units which were yet to observe the formalities as per the said letter of DIC, Govt. of Assam.

On direction, the Superintendent (Tech), Central Excise, Jorhat brought the same to the notice of the Joint Commissioner (Tech.), Central Excise, Shillong on 12.8.2000 that the matters as mentioned in the DIC's letter, Govt. of Assam were already resolved by the said unit and, accordingly PMT was duly issued to the said unit, and, as such, the refund is required to be paid to the said unit. But, the Joint Commissioner (Tech.) Central Excise, Shillong instructed to keep the refund in question pending for the time being over phone on 12.8.2000.

Now, the Party's lawyer has issued a notice demanding the refund of the amount in question within 2.9.2000 as stated, they will proceed against the Assistant Commissioner, Central Excise, Jorhat in the court of law if the refund is not sanctioned by 2.9.2000.

Now, on detailed scrutiny of all the relevant records and documents of the party personally, I find that there is no dispute between the party and the Industry Department, Govt. of Assam and hence nothing pending with them to resolve presently for which the refund can be kept in abeyance.

I, therefore, have to inform you that unless specific order, from your end is communicated the refund shall be released by the 1st day of September, 2000 by the undersigned to avoid litigation in the Court of Law for no reason.

This is for favour of your information please. You are also requested to kindly FAX if there is any such direction as above to keep the refund pending as before.

Yours faithfully,

[Signature] 29/8/2000.

(J.N. DURAGCHAIN),
ASSISTANT COMMISSIONER,
CENTRAL EXCISE, JORHAT.

ANNEXURE :IX

GOVERNMENT OF ASSAM
DIRECTORATE OF INDUSTRIES & COMMERCE:ASSAM
UDYOG BHAWAN:BAMUNIMAIDAN:GUWAHATI

NO.DI(V)R)10/2000/16706 Dated Guwahati, the 12th Sept'2k.

To,

Mr. T. Haokip, IRS,
Joint Commissioner,
Customs & Central Excise
Rap's Mansion, M.G. Road,
Shillong - 793001.

Sub :- Issue of PMT to SSI unit with respect to
the meeting held on 18-08-2000.

Ref :- F.No.IV-16/17/Tech/2000, dtd. 6th Sept/2000.

Sir,

I have the honour to acknowledge your letter referred to above. I am to say that no deadline was fixed for issue of PMT in the said meeting. It was only discussed that informations regarding issue of PMT to SSI units will be intimated to Excise Departments office promptly. In this regard, I am to say that as on today no Cigarette unit applying for Permanent Registration as SSI unit has been granted Permanent Registration certificate. The matter is still under examination at different levels. As regards to M/S Kreeshna Industries Pvt. Ltd., Jorhat, it was found that one PMT was issued by the General Manager, District Industries & Commerce Centre, Jorhat on 19-06-2000, by which time, Government of Assam instructed the General Manager, DICC to take prior approval before issue of PMT. Since the said PMT was issued without approval of the State Government, the General Manager, DICC has been asked to take back the PMT issued without any authority to the said unit. The matter of issue of PMT to M/S Kreeshna Industries PVT. Ltd. is under examination at present. As regards M/S NETCO, the unit has already been asked to suspend production by the Managing Director, AIDC Ltd.

I hope that the above facts will clarify the issues raised by you in your letter and assuring you the best of our co-operation.

Yours sincerely,

(P.K. BORTHAKUR)

Director of Industries & Commerce,
Assam, Guwahati - 21.

Annexure - X

Government of India
Ministry of Finance
Department of Revenue

ANNEXURE : X

FAX / SPEED

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NORTH EASTERN REGION : MORELLOW COMPOUND : SHILLONG - 1

C.NO.IV-16/17/TECH/2000

Dated: 14-09-2000

To,

The Assistant commissioner (BY NAME),
Central Excise Division,
Gurhati / Jorhat / Silchar / Tezpur.

Subject: Keeping in abeyance of Refund to all Cigarette Units operating in Assam and submission of Compliance thereof.

Please refer to this Office letter under C.No.IV-16/42/TECH/99/Pt.I dated 02-08-2000 on the above subject.

The matter regarding issuing of PMT to the Units by the Assam Government has raised many points which need to be resolved.

As per direction of the Board, the refunds in respect of all Cigarette Units are to be kept in abeyance with effect from July, 2000. All Divisional Assistant Commissioners have been directed to strictly abide by this Instruction and not entertain any refund claim.

In respect of the SSI Cigarette Units, discussion has been held with the Directorate of Industries, Assam and we are given to understand that the applications for PMT are under examination and scrutiny and that in deserving cases, the PMT will be issued without delay.

With special reference to M/s. Kreesna Industries (I) Pvt. Ltd., Jorhat, the Director, D.I.C., Assam stated that the General Manager, DICC, Jorhat had issued PMT without getting the prior approval of the state Government. The said General Manager was asked to take back the PMT and not to issue till the matter is cleared by the Directorate of Industries, Assam.

As regard to M/s. NETCO, the Unit's PRC has been cancelled and their Industrial License has been reported to be invalid by the Ministry of Industries, New Delhi. Hence, their refund claims have been kept in abeyance.

In the light of the above development, all Divisional Assistant Commissioners are hereby directed to keep strict watch on all the Cigarette Units under their respective Jurisdiction and not to grant any refund as directed earlier till the issue is resolved.

In compliance to the above direction, you are hereby directed to submit a detail report on the amount of refund kept pending since July, 2000 in respect of each unit under your respective Jurisdiction.

(T. HAOKIP) 14/9/2000
JOINT COMMISSIONER (TECH)
CENTRAL EXCISE SHILLONG.

C.NO. V(18)75/ACJ/INST/REF/2K/2768

ANNEXURE: XI

Dated: 29/9/2000

To,

The Joint Commissioner (Tech),
Central Excise,

Jorhat.

Shri. Seng

Sir,

ANNEXURE: XI

Sub :- Keeping in abeyance of Refund to Cigarette
Units operating in Assam & submission of
compliance thereof.

In continuation to this office letter of even No. 2539 dated 29.8.2000, I have to inform you that neither your goodself nor the Director of Industries, Assam intimated that the PMT in respect of M/s Kreesna Industries (I) Pvt. Ltd is under consideration of taking back, and, it is to be mentioned that the required formalities in this respect as communicated by the Director of Industries Assam have already been got complied with by the Assessee fully, which was also intimated to the Director of Industries, Assam vide this office letter of even No. 2328 dated 23.8.2000 with a copy endorsed to your honour under endorsement C.No. 2329 dated 23.8.2000 clarifying the eligibility of the Assessee for such refund and the same has not been contradicted by the Director of Industries, Assam, thereby establishing of the eligibility of the party beyond doubt.

And, it is also to be mentioned that as per Notification No 5(1)/92-SSI Bd Ministry of Industry, Govt. of India dated 20.7.92 the PMT is to be issued at the DIC level and the same, once the Assessee completes all the formalities indicated at the time of issue of PRC, the unit has commenced or is ready to production on the registration of such SSI Units on permanent basis should be automatic on receipt of the proposal from Assessee, and such Directors are required to evolve a simplified procedure to facilitate issue of PRC/PMT on the basis of the guidelines issued by the said Notifn. and not any prior approval.

It is further to be mentioned that till the PMT of the Assessee is not taken back as stated by you, the Assessee remains eligible for such refund and, refunds in question sanctioned only because the sub Para (b) of Para (1) of the letter under C.No. IV-16/42/Tech/99/Pt-I/15742-50 dated 2.8.2000 wherein it was stated

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that 'Till the matter is resolved' the refunds kept in abeyance, and, in this case the guidelines by Director of Industries, Assam's letter referred DI(V)/(R)128/99/47/8802-8815 dated 25.5.2K are fully complied with by the Assessee which confirmed matter so referred are already resolved.

In absence of the information given by your dated 14.9.2000 that the PMT of the unit is under consideration of taking back the refunds were found to be rightly sanctioned and henceforth till your confirmation comes for doing so no refunds shall be sanctioned in respect of the said Assessee in question.

— This is for your information and necessary action please.

Yours faithfully,

Encl's Pleader's Notice
dated 28.8.2000
of the party enclosed.

19/9/2000
(J.N. BURAGONAIN),
ASSISTANT COMMISSIONER,
CENTRAL EXCISE, JORHAT.