

01/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No. 97/2004

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SECTION OFFICER (Judl.)

Kalish
09.2004

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Ord.App/ ~~Misc. Petn/Cont. Petn/ Rev. Appl.~~ 97/2004

In O.A.

Name of the Applicant(s) M.K. Brahma

Name of the Respondent(s) UOI & ORS.

Advocate for the Applicant Mr. J.L. Sarkar, Mr. A. Chakraborty
Mrs. K. Datta

Counsel for the Railway/ C.G.S.C. @se

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

26.4.2004

Heard Mr.J.L.Sarkar, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.G.S.C.for the respondents.

In view of the order dated 23.4.2004 passed by the Dy. Commissioner, Central Excise, Guwahati, issued in compliance to Estt. Order dated 22.4.2004 of the Additional Commissioner (P&V), Office of the Commissioner of Central Excise, Shillong, keeping the transfer order of the applicant dated 13.4.2004 in abeyance and retaining him in his original place of posting, the O.A. stands disposed of as withdrawn. No costs.

This application is in form.

is filed/C. F. No. 101-

deposited vide P. No.

No. 119/387882

Dated 3/2/04

Dy. Registrar

NO steps.

27/4/04

27.4.04

Copy of the order has been sent to the office for issuing the rule to the advocates for the parties.

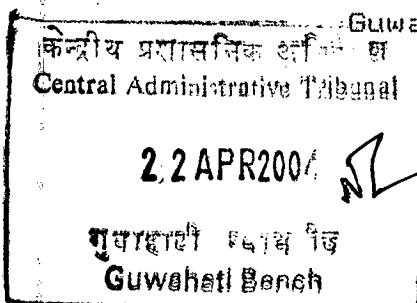
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100/2004
Member (A)

Received
29/04/04

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.



O.A. No. 97 /2004

Sri M. K. Brahma

----- VS -----

Union of India & Ors

Filed by: M. Datta
Advocate.
21.04.04

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 13.1.2004 The Applicant was transferred by Order No.11/2004 dated 13.01.2004 following transfer policy which was decided on December,2003. He joined the post w.e.f. 3.2.2004.
- 17.2.2004 Notification issued by the Central Board of Excise and empowered some officers to exercise powers of recovery under section 11 of the Central Excise Act. The Applicant is not an empowered officer in view of the said Notification.
- 05.4.2004 Letter dated 5.4.2004 of Additional Commissioner (Tech), Central Excise, Shillong calling for explanation of the concerned officers in the above matter of recovery, and also indicating the fact of forming adverse opinion and contemplated action.
- 13.04.2004 The impugned transfer order has been issued transferring the applicant from the present post to Dibrugarh. This order was not issued

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:: 2 ::

by the respondent No.2 who is the competent authority. This order is the outcome of the letter dated 5.4.2004(Annexure-II) and hence the transfer of the applicant is penal in nature.

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In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 97 /2004

Shri M. K. Brahma

Applicant

----- Versus -----

Union of India & Ors

Respondents

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Filed by:

(Anupam Chakraborty)

ADVOCATE

Memorandum Mr. Brahma

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. /2004

BETWEEN

Sri Monoj Kr Brahma,
working as Superintendent of
Central Excise, Guwahati Range-I,
residing at Geetanjali Apartment,
Rukmini Nagar, Dispur Guwahati-6.

_____Applicant

- Vs. -

1. Union of India represented by
the Secretary, Ministry of Finance,
Department of Revenue, Tax Research
Unit, New Delhi.

2. The Chief Commissioner, Customs
& Central Excise, Shillong Zone,
'CRESCENS' Building, Shillong-1.

3. The Commissioner,
Central Excise, Morello Compound,
M. G. Road, Shillong-1.

4. Additional Commissioner (P & V)
Central Excise, Morello Compound,
M. G. Road, Shillong-1.

5. The Deputy Commissioner,
Office of the Assistant
Commissioner of Central Excise,
G.S. Road, Bhangagarh, Guwahati-5.

_____Respondents

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Filed by Mr. applicant
through A. Chakrabarti, Advocate
Monoj Kr. Brahma
21/4/04

Details of the Application :

1. Particulars of the order against which the application is made :

The application is made challenging the legality of the impugned Establishment Order No.60/2004 dated 13.04.2004 transferring the applicant under the guise of administrative ground by abusing power and also exercising such power colourably, and for alteration/modification of the said impugned order by deleting name of the applicant therefrom.

2. Jurisdiction:

The Applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble tribunal.

3. Limitation:

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the Applicant is citizens of India and as such is entitled to the rights and Privileges guaranteed by the Constitution of India. He is a member of Schedule Tribe (Plain) community.

4.2 That the Applicant initially joined service as Inspector of Central Excise w.e.f. 12.07.1982 in the respondents department. He was promoted as Superintendent, Central Excise (Group-B Officer) w.e.f. 8.12.1995 and was

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Mony Ko Barma

posted at Tinsukia. In the year 1998 he was transferred and posted at Guwahati. He joined at Guwahati Office w.e.f. 5.8.1998. He was posted as Superintendent, Central Excise, Guwahati Range-I, Guwahati Central Excise Division w.e.f. ~~6.6.2003~~ 18.4.2001. The applicant was further transferred as Superintendent, Head Quarters Law Unit, Central Excise, Guwahati by the Establishment Order No.11/2004 dated 13.01.2004 which he carried out and joined the post w.e.f. 3.2.2004.

Copy of the Order dated 13.1.2004 is enclosed as Annexure-I.

4.3 That the applicant begs to state that since his appointment he has been serving the office with utmost sincerity and with the satisfaction of all concerned authorities. He has been discharging his duties honestly and without any blemish. It is also stated that the applicant has never been communicated anything adverse in his whole service since appointment. It is further stated that he has discharged all his duties with due care, sincerity and without any negligence during his tenure in Guwahati Range-I, Central Excise, Guwahati.

4.4 That the applicant begs to state that a Office Letter bearing No.IV-16/26/TECH/03/9836 of the Additional Commissioner (Tech), Central Excise, Shillong dated 5.4.2004 has been issued calling for explanation of the Field Officers like the applicant on the matters of recovery of dues from an assessee company. It is stated that the matter of recovery of dues comes within the jurisdiction of

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Memo^d Mr. Brahma

Guwahati Range-I, Guwahati Central Excise Division, where he served as Superintendent w.e.f. ^{18.4.2001} ~~6.6.2003~~ to 30.01.2004. The said letter inter-alia contains as under:

"Direction contained in the above mentioned letters to recover the huge arrears from the DSL Group has not been enforced till date. Commissioner has noted adversely and directed to call for explanation of the Officers concerned immediately.

Fixing of responsibility is contemplated.

You are therefore directed to explain the action taken by the Divisional officer and the Field officers towards recovery of such huge arrears in the light of the above directions within 7 days for Commissioner's perusal."

It is pertinent to mention here that this decision is in direct violation of the decision of the Central Board of Excise to Keep the recovery pending by Order No.:F.No.356/43/2003-TRU dated 8.8.2003.

Copy of the Office Letter dated

5.4.2004 is enclosed as Annexure-II

4.5. The applicant begs to narrate the backdrop of the issue which lead to issuance of the said letter dated 5.4.2004 as under :

That the Government of India issued Notification No.32/99-CE dated 8.7.1999 so as to extend benefit of exemption by way of refund for Cigarettes and Gutkha (pan masala containing tobacco) w.e.f. 8.7.1999 to the units in

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Monej K. Borah

the North East region. The assessee M/s Dharampal Satyapal Ltd established its unit of pan masala, zarda and gutkha factory at Guwahati and Agartala (both in the North East Region). The said assessee company enjoyed the benefit of said exemption till 28.2.2001 and got refund of about Rs.2.16 crore. Later, by Notification No. 6/2001 CE dated 1.3.2001 the benefit of the aforesaid notification No.32/99-CE in respect of tobacco product was withdrawn. The said Notification was challenged by the assessee company before the Hon'ble Gauhati High Court and the Hon'ble High Court in the Writ Appeal No.219-222/2001 quashed the aforesaid Notification No.6/2001 CE by Judgement dated 3.12.2002. Thereafter Section 154 of the Finance Act 2003, on 13.5.2003 retrospectively amended the North East Central Excise exemptions Notification No.32/99-CE withdrawing the benefit of exemption of the said notification w.e.f. 8.7.1999 for tobacco product. The said assessee company was then issued an order of Recovery by Office C.No.V(15)57/SPL/ACB/03/7084 of the respondent No.5 dated 6.6.2003 against which the said assessee company filed appeal before the Commissioner (Appeals) Guwahati along with stay petition, but no stay was granted to them. Meanwhile the respondent Department filed a Special Leave Petition before the Hon'ble Supreme Court assailing the Judgement of the Hon'ble Gauhati High Court in Writ appeal No.219-222 dated 3.12.2002. The Hon'ble Supreme Court stayed the operation of the Judgement of the Hon'ble High Court by an Order dated 12.01.2004. It is pertinent to mention here that the Central Board of Excise by Order No.F.No.356/43/2003-TRU dated 8.8.2003 directed the respondents to keep the recovery

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Memo: Mr. Brahma

pending till further orders.

Copy of the Order of the Central Board dated 8.8.2003 is enclosed as Annexure-III.

4.6 That it is stated that the applicant is not an empowered officer to exercise the power of recovery under Section 11 of the Central Excise Act, 1944. The applicant begs to reproduce Section 11 of the Central Excise Act, 1944 here-in-below for ready reference of the Hon'ble Tribunal which is very much relevant to judge the factual matrix:

11. Recovery of sums due to Government. In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder [including the amount required to be paid to the credit of the Central Government under section 11D], the officer empowered by the [Central board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 954 of 1963) to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and

Mo. No. B. 2003-2004

send it to the Collector of the district in which such person resides or conducts his business and the said collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue."

It is submitted that the said Section 11 specifically mentions that the Officers who are empowered by the Central Board of Excise can exercise the power under the said section. The applicant begs to state that he came to know that the Central Board did not empower any officer of Central Excise to exercise the power under section 11 but only by Notification No.4/2004-C.E.(N.T.), dated 17.2.2004 empowered every Central Excise Officer, not below the rank of an Assistant Commissioner of Central excise, to exercise the powers conferred by the said Section 11. It is reiterated that the applicant is not an officer empowered by the said notification to exercise the power of recovery.

The applicant further begs to state that he could collect only the extract of the said notification dated 17.2.2004 and the Hon'ble Tribunal may be pleased to call upon the respondents to produce the complete copy of the said notification before this Hon'ble Tribunal.

Copy of the extract of the said Notification dated 17.2.2004 is enclosed as Annexure-IV.

4.7 That the applicant begs to state that in view of

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Mooj Ko. Braham

the Central Board's Order dated 8.8.2003 as explained above, and in view of the Notification dated 17.2.2004 under which the applicant is not even competent officer to make recovery the respondents ought not to have issued the aforesaid Letter dated 5.4.2004 (Annexure-II) indicating actions against the Field officers like the applicant.

4.8 That the applicant begs to state that he prayed for Earned Leave which has been duly sanction by the Respondents upto 16.4.2004 by Office Order dated 7.4.2004. It is stated that due to some urgency the applicant prayed for extension of Leave upto 23.04.2004 by application dated 16.4.2004 sent through Fax message.

Copy of the order dated 7.4.2004 with leave application dated 16.4.2004 are enclosed as Annexure-V.

4.9 That the applicant has come to know that the respondent No.3 has been looking for actions against the officers in terms of letter dated 5.4.2004 (Annexure-II). The applicant could learn from his colleagues in the office that action against some Officers and Inspectors allegedly concerned with the recovery as explained above has been taken by way of transfer from the present place of posting. He could collect a copy of the Establishment Order No.60/2004 dated 13.04.2004 by which he has been transferred from Hqrs. Law Unit, Central Excise, Guwahati to Dibrugarh Central Excise Commissionerate. It is stated that this order has not been issued by the respondent No.2 who is the

Monoj Kr. Baruah

Competent Authority in the matters of transfer & posting of the officers like applicant.

Copy of the Order dated 13.04.2004
is enclosed as Annexure-VI.

4.10 That the applicant begs to state that the respondents have mechanically passed the impugned transfer order of the applicant. The respondent authorities decided the matter of transfer as per policy of transfer in December, 2003 and posted him by Order No.11/2004 dated 13.01.2004 (Annexure-I) at Hqrs Law Unit, Central Excise, Guwahati. It is stated that the present home town of the applicant is Guwahati. His transfer only in the month of January, 2004 at Guwahati Office was done following the practice & procedure of transferring and posting of Schedule Tribe and Schedule Cast employees at the nearer to their home town. He joined the Law Unit of Guwahati Office on 3.2.2004. It is respectfully submitted that no exigencies in service has arisen within such a short spell for which he has to be transferred again while the matter of transfer as per policy has already been decided on December, 2003 and acted upon by issuing order dated 13.01.2004 (Annexure-I). Such attitude of the respondents in the matter of transfer can not serve public interest nor can it meet up exigencies in office.

4.11 That the applicant begs to submit that the above transfer order is the result of the order dated 5.4.2004 (Annexure-II) though it has been said to be issued on administrative ground. It is submitted that no

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Memo. No. 2004

administrative exigencies lies behind the said transfer order nor it has been made in public interest. The said transfer order has been issued for collateral purposes and with oblique motives and hence the impugned transfer order is vitiated by abuse of powers. The said transfer order is a maneuver to cover up the responsibilities of the Officers in the matter of aforesaid recovery who are empowered under section 11 of the Central Excise Act in view of the Notification dated 17.2.2004 (Annexure-IV). It is further submitted that the aforesaid transfer is not in administrative exigencies neither in public interest but is a case of victimisation of the applicant. The respondents have adopted a short cut method to cover up the responsibilities of the empowered officers in the entire recovery matter and imposed the punishment upon the applicant by way of transferring him. The office order dated 5.4.2004 (Annexure-II) is a clear cut evidence of the above fact. The malice in fact as well as in law is patent in the above facts and circumstances. The transfer of the applicant, under the above circumstances, is nothing but mala fide exercise of the power to demoralise the applicant who has been efficiently discharging his duties without any blemish. The said order of transfer is extraneous to office exigency and is penal in nature.

4.12 That the respondent department has adopted policy for transfer of Superintendent/Inspectors under which last transfers have been acted upon in December, 2003. It is stated that the department take resort to transfers which are called transfers on administrative ground which includes

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More's No. Benda

transfers of penal nature. The administrative grounds are nowhere explained giving arbitrary power of whimsical transfer. In the present case even though transfers were formally decided on in December, 2003, the present transfer order dated 13.04.2004 has been issued purportedly on administrative ground which is vague and in the present case is penal in nature. No public interest is involved in the transfer. The Hon'ble Tribunal may be pleased to call for the records relating to the transfers and aforesaid recovery.

4.13 That the applicant begs to state that he is only male member to look after his family. His daughter studies in the second year of Degree Course in Commerce at Guwahati and his son is also studying in Class-X (SEBA Course) at Guwahati and it is their mid session. The applicant has dependent father who is 78 years old. His father is suffering from old age diseases. The transfer of the applicant in such a manner and specially under such circumstances shall cause irreparable loss and injury to him and his family members.

5. Ground for reliefs with legal provisions.

5.1 For that the impugned transfer order is the consequence of the Letter dated 5.4.2004 (Annexure-II) which is the result of arbitrariness, whims and capricious and offends Article 14 of the Constitution of India.

5.2 For that the respondents have acted with a closed mind and formed adverse opinion and contemplated action

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Moneo K. Barua

against the field officers like applicant which resulted in transferring the applicant.

5.3 For that the non-application of mind in passing the impugned transfer order is patent.

5.4 For that the impugned transfer order is extraneous to office exigencies and is penal in nature.

5.5 For that the impugned transfer order has been issued for collateral purposes and with oblique motives and hence the impugned transfer order is vitiated by abuse of power.

5.6 For that the impugned transfer order is a manoeuvre to cover up the responsibilities of the empowered officers in the matter of recovery as explained above and is a case of victimisation of the applicant.

5.7 For the impugned transfer order is vitiated by mala fide exercise of power of the respondents. Malice in law as well as in fact is explicit.

5.8 For that the impugned transfer order has not been issued by the respondent No.2 who is the Competent Authority in the matters of transfer & posting of the officers like applicant.

5.9 For that in view of the matter the applicant is entitled to the reliefs sought for.

6. Details of the remedies exhausted

The applicant declares that there is no other

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Monej K. Pradma

efficacious remedies under any Rule and this Hon'ble Tribunal is the only forum to adjudicate the subject matter.

7. Matters not previously file or pending with any other court

The applicant declares that he has not filed any case on the subject matter before any court, forum or any other institution.

8. Reliefs sought for

Under the above facts and circumstances the applicant prays for the following reliefs :

8.1 The impugned transfer order No.60/2004 dated 13.4.2004 be modified/alterd by deleting the name of the applicant therefrom.

8.2 The applicant be allowed to continue in the present post.

8.3 No action in terms of letter dated 5/4/2004 (Annexure-II) against alleged concerned officer (applicant is one) shall be taken.

8.4 Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

The above reliefs are prayed for on the ground stated in para 5 above.

9. Interim Relief

During the pendency of this application the applicant prays for the following interim reliefs:

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Monej Ko. Barma

9.1 The transfer of the applicant be stayed and he may be allowed to continue in the present post.

9.2 Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

The above reliefs are prayed for on the ground stated in para 5 above.

10. This application is filed through the Advocate.

11. **Particulars of Postal Order:**

- i) IPO No : *JTG 387882*
- ii) Date of Issue : *3.02.2004*
- iii) Issued from : *GPO*
- iv) Payable at : *Guwahati*

12. **List of Enclosures**

As per Index.

_____ Verification

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Momeni Mr. Brahma

:: 15 ::

Verification

I, Monoj Kr. Brahma, son of Sri Narendra Nath Brahma, aged about 49 years, a resident of Dispur, Guwahati-6, Dist-Kamrup, do hereby verify that the statements made in the paragraphs 1,4,6 to 12 are true to my knowledge and statements in para 2,3 and 5 are true to my legal advice and that I have not suppressed any material fact.

And I, sign this verification on this 20th day of April, 2004.

Monoj Kr. Brahma

SIGNATURE



GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
MORELLO COMPOUND, SHILLONG - 793 001

ESTABLISHMENT ORDER No. 11/2004
DATED SHILLONG THE 13TH JANUARY 2004

Subject :- Establishment transfer, posting and adjustment of officers in the grade of Superintendent - Order regarding.

The following transfers, postings and adjustment in the grade of Superintendent or Shillong Commissionerate are hereby ordered with immediate effect and until further orders.

S.No.	NAME OF THE OFFICER	FROM	TO
1	Shri M.K. Brahma	Guwahati Range, Guwahati Central Excise Division	India Link Unit, Central Excise, Guwahati
2	Shri A. Chakraborty	Guwahati-VII Range, Guwahati Central Excise Division	Comptroller (Appeals) Central Excise, Guwahati
3	Shri N.M. Balahya	Hqrs. A/E, Guwahati Central Excise Division	Hqrs. Audit Unit, Central Excise, Guwahati
4	Shri B.C. Nath	Divisional Office, Dhubri Central Excise Division	Hqrs. Audit Unit, Central Excise, Guwahati
5	Shri S.K. Kundu	Goalpara Range, Dhubri Central Excise Division	Hqrs. Audit Unit, Central Excise, Guwahati
6	Shri R.K. Debendra Singh	Imphal Customs Division	Guwahati-V Range, Guwahati Central Excise Division
7	Shri P.K. Das	Guwahati Customs Division	Hqrs. Low Unit, Central Excise, Guwahati
8	Shri B.C. Patir	Hqrs. Audit Unit, Central Excise, Guwahati	Tech-V Section, Guwahati Central Excise Division
9	Shri A. Chatterjee	A/E Unit, Guwahati Central Excise Division	Nagaoon Divisional Office, Nagaoon Central Excise Division
10	Smt. N. Phukan	Commr. (Appeals), Central Excise, Guwahati	Tech-II Section, Guwahati Divisional Office, Guwahati Central Excise Division
11	Shri P. Banerjee	Shillong Division Central Excise, Shillong	Commr. (Appeals), Central Excise, Guwahati
12	Shri R.K. Sarkar	Commr. (Appeals), Central Excise, Guwahati	Guwahati Range-I, Guwahati Central Excise Division
13	Shri Lalqwnllanu	Jagroad Range, Guwahati Central Excise Division	Assam Range, Silchar Central Excise Division
14	Shri J.Q.K. Harch	Tura C.R.F. Dhubri Customs Division	Goalpara Range, Dhubri Central Excise Division
15	Shri L. Krelo	Dimapur Customs Division	Olphar Range, Tezgaon Central Excise Division
16	Shri Naziruddin	Mankachar L.C.S. Dhubri Customs Division	Divisional Office, Dhubri Central Excise Division
17	Shri J.K. Baskin	Shillong Hqrs. Office, Central Excise, Shillong	Guwahati Range-VII, Guwahati Central Excise Division
18	Shri P.P. Kujur	Guwahati Customs Division	Hqrs. Audit Unit, Central Excise, Shillong
19	Smt. H. Synrem	Shillong Customs Division	Hqrs. Audit Unit, Central Excise, Shillong
20	Shri J.C. Das (I)	Karimganj Customs Division	Dharmamagar Range, Silchar Central Excise Division
21	Shri S.K. Roy	Dharmamagar Range, Silchar Central Excise Division	Agartala Range, Silchar Central Excise Division
22	Shri J.L. Bhowmick	Agartala Range, Silchar Central Excise Division	CIU-VIG Br. Hqrs. Office, Central Excise, Shillong
23	Shri J. Dey	CIU-VIG Br. Hqrs. Office, Central Excise, Shillong	Karimganj Range, Silchar Central Excise Division
24	Shri B. Bhattacharjee	Nagaoon Range, Nagaoon Central Excise Division	A/E Unit, Silchar Central Excise Division
25	Shri S. Dhar	A/E Unit, Silchar Central Excise Division	Assam Range, Silchar Central Excise Division

Attested by
[Signature]

27.	Shri P. Bhattacharjee	Badarpur Range, Silchar Central Excise Division	Divisional Office, Silchar Central Excise Division
28.	Shri D. Mazumdar	Adjudication Branch Hqs. Office Central Excise, Shillong Agartala Customs Division	Badarpur Range, Silchar Central Excise Division
29.	Shri T.M. Hartlong	Hqs. Audit Unit, Central Excise, Guwahati	PRO, Hqs. Office, Central Excise, Guwahati
30.	Shri L. Hallin	Hqs. Audit Unit, Central Excise, Guwahati	Guwahati Range-I, Guwahati Central Excise Division
31.	Shri K.C. Deka	Hqs. Audit Unit, Central Excise, Guwahati	Guwahati V Range, Guwahati Central Excise Division
32.	Shri A.K. Choudhury	Guwahati Range-IV, Guwahati Central Excise Division	Commr. (Appeals), Central Excise, Guwahati
33.	Shri Bikash Chakraborty	Hqs. Audit Unit, Central Excise, Guwahati	Tech I Sec, Guwahati Divisional Office, Guwahati Central Excise Division
34.	Shri A.K. Chakraborty	Guwahati Range I, Guwahati Central Excise Division	Divisional A/E, Guwahati Central Excise Division
35.	Shri Kallash Burman	Tech II Sec, Guwahati Divisional Office, Guwahati Central Excise Division	Hqs. Anti-Evasion, Guwahati Central Excise Division
			Guwahati Range III, Guwahati Central Excise Division

27000
COMM
CENTRAL
SH

2.No.II(3)18/ET/II/2003

208-77

Dated :-

17.4 JAN 2004

Copy forwarded for information and necessary action to :-

1. The Chief Commissioner, Customs & Central Excise, Shillong Zone, 'CRESCENS' Building, M.G. Road, Shillong -1
2. The Commissioner, Customs (Preventive), NER, Shillong.
3. The Commissioner, Central Excise, Dibrugarh.
4. The Commissioner (Appeals), Central Excise, Guwahati.
5. The Additional Commissioner (P&V), Central Excise, Shillong/Dibrugarh.
6. The Additional Commissioner (Tech), Central Excise, Hqs. Office Shillong/Dibrugarh.
7. The Additional Commissioner (P&I), Customs (Preventive), NER, Shillong.
8. The Additional Commissioner, Customs Division, Guwahati.
9. The Joint Commissioner (P&V), Central Excise, Dibrugarh.
10. The Joint Commissioner, Customs (Preventive), NER, Shillong.
11. The Deputy/Assistant Commissioner, Central Excise, _____ Division, Shillong/Dibrugarh Commissionerate. Copy(s) meant for the concerned officer(s) is/are enclosed.
12. The CAO, Central Excise/Customs, Shillong/Dibrugarh Commissionerate.
13. The PAO, Customs & Central Excise, Shillong.
14. Accounts I & II/ Confidential Branch/CIU-Vigilance Branch, Central Excise Hqs. Shillong.
15. Shri/Smtl. _____, Superintendent, for compliance.
16. The General Secretary Group 'B' Superintendents' Association, Customs & Central Excise, Shillong/Dibrugarh.
17. Guard File.

*Attested
by
R.D.*

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COMM
CENTRAL
SH



**COMMISSIONER OF CENTRAL EXCISE
MORELLO COMPOUND,
M.G. ROAD,
Shillong**

Tel. 0364-2224751/2223030. Fax. 0364-2223428/2226215/2222330. E-Mail: cexshill@excise.nic.in

C.No. IV-16/26/TECH/03/
To. 4336

Dated: - 5 APR 2004

The Deputy Commissioner (B & A) (C)
Central Excise,
Cawahati

Subject: Recovery of arrears from DSL Group -- regarding.

- Reference: (i) Letter No. IV-16/13/TECH/2003/40351-52 dated 21.10.2003 issued by the Commissioner with the direction to recover the arrear on or before 07.11.03, otherwise to initiate coercive measures.
(ii) Letter even No. 42738-41 dated 6.11.03 disposing off representations submitted by DSL Group to the Hqrs.
(iii) Letter even No. 48 dated 1-01-2004 issued by the Commissioner, directing to enforce Section 11 of the Central Excise Act, 1944 and the Section 142 of the Customs Act, 1962 to recover the arrear.
(iv) Letter even No. 5398-400 dated 26.02.2004 issued by the Additional Commissioner (Tech) directing to enforce coercive measures to recover the arrears.
(v) Letter even No. 7337-38 dated 16.03.2004 of the Additional Commissioner (Tech) to enforce recovery immediately as per direction communicated in earlier letters.

Direction contained in the above mentioned letters to recover the huge arrears from the DSL Group has not been enforced till date. Commissioner has noted adversely and directed to call for explanation of the officers concerned immediately.

Fitting of responsibility is contemplated.
You are therefore, directed to explain the action taken by the Divisional officer and the Field officers towards recovery of such huge arrears in the light of the above directions within 7 days for Commissioner's perusal.

(T. HAOKIP) 5/4/04
Additional Commissioner (Tech)

Copy to be sent to A.C. Santhosh, Superintendent of C.E., Garoohat - I
Range. It is directed to submit complete explanation of arrears within three days
of receipt of this communication.

AT: 6.4.04

DEPUTY COMMISSIONER

Attested
by
Adv.

CE EXCISE SHILLONG
11:18

FAX NO. : 0364222330

Aug. 17 2003

24 (14) (508)

F.No.356/43/2003-TRU
Government of India
Ministry of Finance
Department of revenue
Tax Research unit

Dated: 8.8.2003

- To
1. Chief Commissioner of Customs & Central Excise, Shillong
 2. Commissioner of Central Excise, Shillong/Dibrugarh

Subject: - Retroerspective amendment to the North East excise duty exemption, regarding

Section 154 of the Finance Act 2003, has retrospectively amended the North East central excise exemptions notification no. 32/99-CE and 33/99-CE both dated 08/07/99, so as to withdraw the benefit of exemption for cigarettes and pan masala containing tobacco 'guthka' w.e.f. 08/07/99. Such amendment also provides for recovery of amounts, which would not have been refunded but for such amendment, within a period of thirty days from the date on which the Finance Bill 2003 got assent of the President. It also provides for charging of interest @ 15% in case of delay in such payments.

It has been brought to the notice of the Board that, in cases where the amount recoverable has not been paid by the manufacturers within the prescribed period, show cause notices have been issued by the Central Excise Commissionerates at Shillong and Dibrugarh. It has also been brought to the notice of the Board that in some cases, orders for recovery of the central excise amounts refunded to the affected units, have also been issued.

In this regard, Finance Minister at the consideration stage of the Finance Bill had made the following statement, in the Parliament:

"No industry other than tobacco in the North East region for Assam is affected by it. What you are now asking about tobacco is to make an exception for chewing tobacco and guthka, I will consider it fully, I will try and find a suitable legal answer for this purpose."

The matter has been examined by the Board and in view of the assurance given by the Hon'ble F.M. it has been decided to keep all such show cause notices, issued in respect of

ATTENTION:

D.C. GUWAHATI-

FOR INFORMATION AND NECESSARY ACTION

Supd (Genl) / Incharge
Mr. Executive Tax Officer
to the effect of unit for R.O. up to Rs. 1000/-
to be paid for R.O. up to Rs. 1000/-

12/8/03

Sh. S. Bhattacharya
Comptroller & Auditor
Govt. of Assam
12/8/03
Secy-1


11-17

NO. : 0064222330

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chewing tobacco and gutkha, pending till a final decision is taken in this regard. In case Adjudication orders for recovery in this regard have been issued, the actual recovery of such amounts may also be kept pending till further orders. Accordingly, you are directed to keep all such show cause notices pending, till further orders on the matter. It is however, clarified that show cause notices as necessary may continued to be issued, so that statutory bar on limitation is not attracted.

5 Receipt of this letter may please be acknowledged.


(Gautam Ray) 8/2/23
Joint Secretary (TRU)

*Attested
Dutta
Ran.*

Notifications

Central Excise

Recovery of sums due to Government — Assistant Commissioner and above empowered under Section 11 of Central Excise Act, 1944

[Add on page 4.27 of Central Excise Law Manual 2004]

In exercise of the powers conferred by section 11 of the Central Excise Act, 1944 (1 of 1944), the Central Board of Excise and Customs, referred to in that section, empowers every Central Excise Officer, not below the rank of an Assistant Commissioner of Central Excise, to require the payment of duty and any other sums of any kind payable to the Central Government under any of the provisions of the said Act or of the rules made there under (including the amount required to be paid to the credit of the Central Government under Section 11D of the said Act) within his jurisdiction and thereby to exercise all the powers of such officer specified under the said section 11.

[Notification No. 1/2004-C.E. (N.T.), dated 17-2-2004]

Attested:
Sd/-
Adm.

OFFICE OF THE ASSISTANT COMMISSIONER : CENTRAL EXCISE
BHANGAGARI GUWAHATI-5

OFFICER ORDER

Dated Guwahati, the 7/4/04 199

1. The ^{Deputy} Asst. Commissioner of Central Excise, Guwahati-5 has been pleased to sanction leave to

Shri/Smt. M. K. Brahma, Supdt C. Ex Hqs as follows in
Law cell Guwahati

2. Shri/Smt. _____ is hereby granted leave as follows :-

- a) Earned Leave for 5 days from 12/4/04 to 16/4/04
- b) Earned Leave for _____ days from _____ to _____
- c) Earned Leave for _____ days from _____ to _____
- d) Half-Pay Leave for _____ days from _____ to _____
- e) Commuted Leave for _____ days from _____ to _____
- f) L. N. D. fro _____ days from _____ to _____
- g) Ex-Leave without pay for _____ days from _____ to _____

Prefixing 9/4/04, 10/4/04 and 11/4/04 and

suffixing 17/4/04 on 18/4/04

Sd/ Administrative Officer of
Central Excise, Guwahati

C. No. II (20) 11 Leave 1 Aug 98 4529-30

Dated : 7.4.04

Copy forwarded for information & necessary action to :-

1) Shri/Smt. M. K. Brahma, Supdt C. Ex Hqs Law cell Guwahati
Central Excise, Guwahati-5 (Assam)

2) The Supdt. of Central Excise _____

3) Bill Sec., C.E. Guwahati Divisional Office.

4) A. P. R. O., Central Excise, Guwahati-5 (Assam)

Sm - P. K. Das, Supdt C. Ex Tech-II Guwahati will look after the work of
Sm - M. K. Brahma, Supdt C. Ex Hqs Law cell Guwahati during leave

Rec'd

B. K. Das
Administrative Officer,
Central Excise Guwahati

*Attested
by
P. K. Das*

To,
The Deputy Commissioner
Central Excise
Sethi Trust Building 6th Floor
Bhangagarh, Guwahati - 5

"Leave Extension up to 23rd April 04 Solicited"

M.K.Brahma
Fakiragram, Puran Bazar
Fakiragram
Date:- 16th April 04

[SENDING REPORT]

Apr. 16 2004 12:44PM

OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
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Attested
Dutta
Pras.



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COMMISSIONER OF CENTRAL EXCISE
MORELLO COMPOUND
M.G. ROAD, SHILLONG

Tel 9 -0364-2224751 / 2223030.

FAX 91-0364-2223428 / 2226215.

E-Mail: ceexshill@excise.nic.in

ESTABLISHMENT ORDER No. 60/2004

DATED SHILLONG THE 13th APRIL 2004

Subject : - Establishment transfer, posting and adjustment in the grade of
Superintendent - Order regarding.

The following transfers, postings and adjustment in the grade of Superintendent are hereby
 ordered with immediate effect and until further orders.

Sl.No.	Name	From	To
1.	Shri Dibakar Choudhury	Law Branch, Central Excise Hqrs., Shillong.	Guwahati Range I, Guwahati Division.
2.	Shri R.K. Sarkar	Guwahati Range I, Guwahati Division.	Dibrugarh Central Excise Commissionerate.
3.	Shri M.K. Brahma	Hqrs. Law Unit, Central Excise, Guwahati	Dibrugarh Central Excise Commissionerate.
4.	Shri. Ramashwar Bhattacharjee	Silchar Divisional Office, Silchar Division	Agartala Range, Silchar Division
5.	Shri S.K. Roy	Agartala Range, Silchar Division,	Dibrugarh Central Excise Commissionerate.
6.	Shri Sudip Dev	Tech. Branch, Tezpur Division, Dibrugarh Commissionerate.	Hqrs. Law Unit, Central Excise, Guwahati

- (i) This order is issued on administrative grounds.
- (ii) The officers stand relieved on 16th April 2004.
- (iii) Shri. Ashish Roy, Superintendent, Appeals Branch is directed to hold additional charge of Law Branch Central Excise Hqrs., Shillong with immediate effect and until further orders.
- This issues with the approval of the Commissioner, Central Excise, Shillong.

(B. THAMAR)
 ADDITIONAL COMMISSIONER (P.Y.)

C.No.II(3)18/ET-II/2003/ 11056 - 80

Dated :- 13 APR 2004

Copy forwarded for information and necessary action to:-

1. The Chief Commissioner, Customs & Central Excise, Shillong Zone, 'CRESCENS' Building, M.G. Road,
 Shillong -1.

Contd... page - 2-

Attested
 Hqrs.
 Adv.

— 25 —

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-2-

2. The Commissioner, Customs (Preventive), NER, Shillong.
3. The Commissioner, Central Excise, Dibrugarh.
4. The Commissioner (Appeals), Central Excise, Guwahati.
5. The Additional Commissioner (P&V), Central Excise, Dibrugarh.
6. The Additional Commissioner (Tech), Central Excise, Hqs. Office Shillong. Copy meant for the concerned officer is enclosed.
7. The Additional Commissioner (P&I), Customs (Preventive), NER, Shillong.
8. The Joint Commissioner (P&V), Central Excise, Dibrugarh.
9. The Deputy/Assistant Commissioner, Central Excise, _____ Division, Shillong/Dibrugarh Commissionerate. Copy(s) meant for the concerned officer is/are enclosed.
10. The CAO, Central Excise, Shillong Commissionerate.
11. The PAO, Customs & Central Excise, Shillong.
12. Accounts & II/ Confidential Branch/CIU-Vigilance Branch, Central Excise Hqs. Shillong.
13. Shri. _____ Superintendent, for compliance.
14. The General Secretary Group 'B' Superintendents' Association, Customs & Central Excise, Shillong, Dibrugarh.
15. Guard File.

[Signature]
13.4.04.

ADDITIONAL COMMISSIONER (P&V)

*Attended
Dutta
Rohr.*