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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 72/2007.....

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SECTION OFFICER (Judl.)

Malita
25/9/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 72/QT
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) Nimanshu Rayasaha vs Union of India & Ors

Advocate for the Applicant(s) M. Chanda, S. Nath
Ms. U. Dutta

Advocate for the Respondent(s) Case

Notes of the Registry	Date	Order of the Tribunal
1. The application is in form of B.R.C. F. fee Rs. 50/- deposited with P.C.D./D. No. 286925097	19.3.2007	Present: The Hon'ble Shri K.V.Sachidanandan Vice-Chairman. The Hon'ble Shri Tarsem Lal Administrative Member.
Dated 21.1.07		The Applicant is presently working as Assistant Commissioner, Central Excise at Tinsukia. Vide an earlier transfer order dated 1.8.2005 (Annexure- 4) the Applicant was transferred from Dibrugarh to Shillong which was later on modified transferring him to Tinsukia since his wife cannot resist the climate of Shillong and thereafter he is working at Tinsukia. However, only after completion of one and half year in the present station and without any notice and considering his
Dy. Registrar <i>RC</i>	19/3/07	
Petitioner's copy for issue as received.		
<i>RC</i>		
<i>RC</i>		

Contd.P/2

Contd.
19.3.2007

choice station vide impugned order dated 9.3.2007 (Annexure-8) he is transferred to Shillong again which is under challenge in this O.A. before this Tribunal.

objection

Mr. M. Chanda, learned counsel for the Applicant submits that there is no public interest nor any necessity of the Applicant being transferred to Shillong since it is being a single order and also there is malafide in the action of the Respondents in transferring the Applicant.

Mr. G. Baishya, learned Sr. C.G.S.C for the Respondents requested for time for getting instruction. Ten days time is granted for granted.

Post the matter on 29.03.2007.

In the interest of justice, the operation of the impugned Annexure-8 order dated 9.3.2007 is kept in abeyance till such time.

Member

Vice-Chairman

/bb/

29.3.2007

Mr. G. Baishya, learned Sr. C.G.S.C. is granted further four weeks time to file reply statement.

Post on 15.5.2007. Interim order shall continue till such time.

Order dt-29/3/07
issuing to learned
Advocates for both
the parties.

Ch
29/3

/bb/

Vice-Chairman

Notes of the Registry Order of the Court of Appeal

① No Wb has been filed.

20/4/07

1.5.07. No reply has been filed. Four weeks time is granted to file written statement. Interim order shall continue. Post the matter on 4.6.07.

Vice-Chairman

No Wb has been filed.

12/6/07

13.6.2007 Mr.G.Baishya, learned Sr. C.G.S.C. filed reply statement. Let it be brought on record if the same is otherwise in order. Copy of the same is furnished to the learned counsel for the Applicant. He wanted four weeks' time to file rejoinder. Let it be done.

Post on 16.07.2007. Interim order shall continue till such time.

Vice-Chairman

/bb/

Written statement has been filed on behalf of the respondents.

NS
15.6.07

17.7.2007

Mr.M.Chanda, learned counsel for the Applicant is granted three weeks time to file rejoinder.

Post the case on 16.8.2007. Interim order shall continue till such time.

Rejoinder not filed.

13.7.07 /bb/

Vice-Chairman

order dt-17/7/07 issuing to both the parties.

CG
19/7/07

Rejoinder not filed.

22/2/08

Notes of the Registry

20.02.2008 Heard Mr. S. Nath, learned counsel appearing for the Applicant and Mr. G. Balshya, learned Sr. Standing Counsel appearing for the Respondents.

Mr. S. Nath, learned counsel for the applicant has stated that the Applicant is being transferred from Central Excise Tinsukia to Central Excise Ranchi, where he has already joined in 2007.

In view of this, the matter stands ^{having} disposed of as become infructuous.


(Khushiram)
Member(A)

lm

26.2.

Received
Jas
Adarsh
26/2

19 MAR 2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 72/2007

Shri Himangshu Ranjan Saha

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant is serving as Ass'tt. Commissioner, Central Excise at Tinsukia, where he joined on 07.09.05, and after serving about 1 and 1/2 years at Tinsukia he is sought to be transferred at Shillong Commissionerate with malafide intention and also in violation of transfer policy 2005.

2005- Central Board of Excise and Customs published transfer policy 2005 for Group 'A' officers of Indian Revenue Service. In terms of clause 6.2, ordinarily the tenure of an officer on a sensitive post shall be 2 to 3 years at one stretch. (Annexure- 1)

26/28.04.05- Respondent No. 3 invited option from all Group 'A' officer including the applicant. (Annexure- 2)

28.04.2005- Applicant submitted 5 choice stations as option for posting. (Annexure- 3)

01.06.2005- Respondents transferred the applicant from Dibrugarh to Shillong in a high altitude without considering his option. (Annexure- 4)

22.02.03, 08.12.03, 27.02.03-Wife of the applicant is suffering from serious ailment of osteoarthritis (knees) who cannot move freely and her health does not suit climate of Shillong, as such applicant submitted representation for cancellation of his posting at Shillong. (Annexure- 5 and 6 Series)

05.08.2005- Applicant approached this Hon'ble Tribunal through OA No. 206/2005, which was disposed on 05.08.05 with a direction to submit representation and the respondents were directed to consider case of the applicant as per his option.

24.08.05/25.08.05- Respondents reviewed transfer of the applicant from Shillong to Tinsukia, accordingly he joined at Tinsukia. (Annexure- 7 Series)

Himangshu Ranjan Saha

10.05.2005- Applicant in his quasi-judicial capacity granted benefit of exemption of central excise duty to M/S Chubwa Tea Estate in terms of Govt. notification dated 08.07.99, said exemption was forwarded to the Joint Commissioner (Audit) by the applicant.

25.07.2005- Respondent No. 4 withheld the case of refund passed by the applicant. (Annexure- 9 series)

^{27.}
16.09.2005- Respondent No. 4 surprisingly cleared similar nature of claim of Jorhat Central Excise Division in respect of M/S Kakajan Tea Estate, P.O Moriani, Dist- Jorhat, Assam. (Annexure- 10 series)

31.01.2006- Respondent No. 4 preferred a Review Application before Commissioner (Appeal), which was rejected vide order dated 31.01.06 and action of the applicant was upheld. (Annexure- 11)
Respondent No. 4 developed animosity with the applicant and at her instance the isolated impugned transfer order dated 09.03.07 has been passed by the respondent No. 3 with a malafide intention to harass the applicant in violation of transfer policy and also without any public interest.

22/25.09.2006- Memorandum of charge sheet issued to the applicant at the instance of Respondent No. 4 for sanctioning refund claim to M/S Chubwa Tea Estate. (Annexure- 12)

15.11.2006- Applicant submitted reply addressed to the President of India. (Annexure- 13)

09.03.2007- Respondents have issued impugned isolated transfer order to the applicant whereby he has been transferred and posted from Tinsukia to Shillong Commissionate with a malafide intention and also in violation of transfer policy- 2005, just to harass him. (Annexure- 8)
Hence this Original Application.

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order No. DOPM AC-DC/53/2007/dated 09.03.2007 and ORDER No. 27/2007 dated 09.03.2007 communicated vide letter No. C.NO. II (3)6/CCO/SH/2006/3200-214 dated 09.03.2007 (Annexure- 8).
2. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in his present place of posting at Tinsukia

Himangshu Ran. Saha

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Division or alternatively to post the applicant in his choice station after obtaining necessary option in the light of the transfer policy- 2005.

3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned transfer and posting order No. DOPM AC-DC/53/2007 dated 09.03.2007 and ORDER No. 27/2007 dated 09.03.2007 communicated vide letter No. C. NO. II (3) 6/CCO/SH/2006/3200-214 dated 09.03.2007 (Annexure- 8).
2. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

Heinangshu R. Ach.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A. No. 72 /2007

Shri Himangshu Ranjan Saha.

Applicant.

-Versus-

Union of India & Ors.

: Respondents.

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Filed By:

S. Nath

Advocate

Date:- 19/03/2007

Himangshu Ranjan Saha

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O.A. No. 72 /2007

BETWEEN:

Shri Himangshu Ranjan Saha
Son of Late Hem Ranjan Saha
Assistant Commissioner,
Central Excise,
Tinsukia Division, Tinsukia, Assam.

Applicant.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.
2. Central Board of Excise and Customs,
Govt. of India,
Through it's Chairman, North Block,
New Delhi-110001.
3. The Chief Commissioner
Central Excise and Customs,
Shillong Zone,
3rd Floor, Crescens Building,
M.G. Road, Shillong- 793001.
4. The Commissioner,
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O- C.R. Building, Dibrugarh- 786003.
5. Eva M.R. Hynniewta
Commissioner,
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O- C.R. Building, Dibrugarh- 786003.

..... Respondents.

Filed by the applicant
through: S. Nath.
Advocate
19/03/2007.

Himangshu Ranjan Saha

DETAILS OF THE APPLICATION

1. Particulars of the order (s) against which this application is made:

This application is made against the impugned order bearing letter No. II (3) 6/CCO/SH/2006/3200-214 dated 09.03.2007 (Annexure-8), whereby the applicant is sought to be transferred from Tinsukia Central Excise Division to Shillong Central Excise Commissionerate, Shillong with a malafide intention and colourable exercise of power in total violation of the professed norms laid down in para 5.8 of the transfer policy of 2005 issued by the Customs and Central Excise department and also without providing any opportunity of choice station posting in terms of para 5.8 of the transfer policy praying for a direction upon the respondents to reconsider/review the order of transfer for posting the applicant in any of the choice places other than Shillong, in view of the serious ailment of the wife of the applicant who is suffering from osteoarthritis.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the applicant is a Group -A Officer, in the department of Customs and Central Excise and, now working as Assistant Commissioner in the Central Excise department at Tinsukia. The applicant was initially appointed as

Neerajashree Bn. Jala

Inspector in the Customs and Central Excise department in July, 1976 and thereafter promoted as Superintendent in the year 1990, however, he was subsequently, promoted to the post of Asstt. Commissioner in Group-A service in the Customs and Central Excise department on 10.12.2002 and posted at Dibrugarh, Central Excise Commissionerate office on 18.12.2002. He has served in different places both in the capacity of Inspector as well as Superintendent in the Central Excise and Customs Department, more particularly, the applicant served at Shillong during the period from September 1983 to September, 1986 in the first spell and subsequently he has served again during the year 1994 to 1996 April as Superintendent at Shillong. The applicant was transferred and posted to Dibrugarh Central Excise department in the month of December 2002 in the capacity of Assistant Commissioner and since then the applicant has been continuously served at Dibrugarh till August 2005. However vide order bearing letter No. 38/2005 dated 24.08.05, which was communicated vide C. No. II (3) 9/CC0/SH/2005 dated 24.08.05 applicant has been transferred from Dibrugarh to Tinsukia Central Excise Division, accordingly he was relieved vide letter No. C. No. II (3) 8/ET-I/CCE/DIB/2005/13021-38 dated 25.08.2005, where he is serving at present. It is relevant to mention here that the present applicant is now being aggrieved with the impugned transfer dated 09.03.2007, whereby the applicant is sought to be transferred from Tinsukia to Shillong within a span of 1 and 1/2 year in colourable exercise of power and also with a malafide intention.

4.3 That it is stated that with reference to latter dated 26th/28th 2005 bearing No. C. No. II (8) 12/ET/COMMR/DIB/03/5050-58, option for transfer and posting sought from all Group 'A' officer including the applicant who are otherwise due for transfer. The applicant accordingly submitted his option at least for 5 choice places in terms of the provisions laid down in para 5.8 of the transfer policy of 2005 formulated for transfer and posting of Group 'A' officers of the Central Excise and Customs. The applicant considering the

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R. Saha

severe ailment of his wife who is suffering from osteroarthritis submitted option for posting vide his letter dated 28.04.2005 addressed to the Additional Commissioner (P & V), Central Excise, Dibrugarh in any of the following 5 places, at the relevant point of time.

- 1. Silchar ✓
- 2. Guwahati ✓
- 3. Kolkata Air Port.
- 4. IGI Air Port, New Delhi.
- 5. Kandala.

The applicant was under the expectation that his case would be considered in terms of the options submitted by him as per transfer policy of 2005.

(Copy of the transfer policy of 2005 and option letter dated 26/28.04.2005 are enclosed herewith and marked as Annexure-1 and 2 respectively).

4.4 That most surprisingly by the order No. 19/2005 dated 1st August 2005, issued under letter C. No. II (3) 9/CCO/SH/2005/61869-897. The applicant was sought to be transferred from Dibrugarh Central Excise Division to Shillong Central Excise Headquarter without considering any of the places opted by the applicant in terms of the provision laid down in para 5.8 of the transfer policy of 2005. It is pertinent to mention here that the post of Assistant Commissioner at that relevant point of time fell vacant in 2 places out of the 5 places opted by the applicant i.e. at Guwahati as well as at Silchar in view of transfer and posting of Shri A. Hussain, Deputy Commissioner, transferred and posted from Guwahati to Kolkata and Shri H. Suklabaidya, Asstt. Commissioner from Silchar to Shillong by separate orders, therefore there was no difficulty on the part of the respondents to accommodate the applicant at that point of time either at Guwahati or at Silchar more particularly in view of the fact that wife of the applicant was

Hemangshu P. Saha

suffering from serious ailment like arthritis apart from the other domestic problems.

(Copy of the letter dated 28.04.05 as well as the order of transfer and posting dated 01.08.05 are enclosed herewith as Annexure -3 and 4 respectively).

4.5 That it is stated that wife of the applicant Mrs. Bharati Saha is suffering from severe ailment like osteoarthritis and Ischemic heart disease which would be evident from medical certificate dated 08.12.2003, 22.02.2005 and 27.02.2005 issued by the competent medical officers, therefore, it was difficult to stay with his wife in high altitude and cold place like Shillong. In view of such serious ailment of his wife the applicant at the beginning submitted his option for at least 5 places other than Shillong in order to avoid a cold place like Shillong but unfortunately the said options were not considered while the transfer and posting order was issued, in total violation of the provision laid down in para 5.8 of the transfer policy of 2005, even no attempt is made to accommodate the applicant at that point of time in any of his choice station although the authority is aware that post in the cadre of Ass'tt. Commissioner is available at least in 2 places out of the 5 places opted by the applicant i.e. at Guwahati or Silchar.

(Copies of the medical certificates are enclosed herewith for kind perusal of the Hon'ble Court and marked as Annexure-5 series).

4.6 That the applicant submitted numbers of representations on different dates i.e. on 03.03.2003, 25.09.2003 and 08.11.2004 addressed to the Chief Commissioner, Customs and Central Excise, interalia praying for his transfer and posting in his home town at Silchar in the district of Cachar, Assam mainly on the ground that his wife is a serious patient suffering from Arthritis who cannot move properly and also on some other grounds. However, the applicant while asked for submission of his option as per

Hemangshi R. Saha

transfer policy of 2005 he has not confined his option only to a particular place like Silchar but opted for other 4 places in addition to Silchar but even then the same has not been considered in the light of the direction contained in the transfer policy of 2005 at the relevant point of time. It is obligatory on the part of the respondents Union of India to consider the transfer and posting of the officers belonging to group 'A' cadre strictly in terms of the relevant provisions contained in the transfer policy which is formulated by the respondents authority themselves, more so when there was absolutely no difficulty on the part of the respondents to accommodate the applicant in any of the places opted by him.

(Copy of the representations dated 03.03.2003, 25.09.2003 and 08.11.2004 are enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 6 (series).

4.7 That it is stated that in transfer policy of CBEC relating to group 'A' officers of the central Excise and Customs department published during the year 2005, it is specifically laid down in para 5.8 that the officers after completing their tenure in the North Eastern Region would get preference in posting to station of their choice. The relevant portion of paragraph 5.8 of the transfer policy of CBEC is quoted below;

"5.8 The officers after completing their tenure in North Eastern Region Assam, Sikkim, Meghalaya, Mizoram, Manipur, Nagaland, Arunachal Pradesh and Tripura), Jammu and kahsmir, NACEN and its RTIs and vigilance Directorate and CESTAT will get preference in posting to stations of their choice."

In view of the specific provision laid down in the transfer policy 2005, the applicant is at least entitled to a choice station posting out of 5 places mentioned by the applicant in his option submitted to the respondent department more so when the posts in the cadre of assistant

Hemangshu R. Saha

Commissioner are available. The respondents could have easily accommodate the applicant in any of his choice station but no effort at all is made on the part of the authority to accommodate the applicant in his choice station that too for a medical problems of his wife without much difficulty. The guideline/direction/provisions contained in the transfer policy-2005 remain in paper only. It is submitted that deliberate violation of a transfer guideline itself is malafide and more so when it was possible on the part of the transferring authority to accommodate the applicant in his choice station within the terms of the direction contained in the transfer policy of 2005.

It is obligatory on the part of the respondents to comply with the guidelines when there is administrative exigency since the impugned order of transfer and posting dated 01.08.2005 is a routine order of transfer. In support of the contention raised in this paragraph the applicant relied upon the decision dated 20.02.2001 passed in the case of G. Selvacoumar -Vs- Union of India and Ors. reported in 2002 (2) SLJ CAT (Madras) 513, wherein it is held by the learned Tribunal, Madras Bench that transfer against guidelines is bad in law. It is also held that deviation from the guideline is permissible only in the case of administrative exigency.

4.8 That the transfer policy- 2005 is a transfer policy issued by the CBEC as such the respondents are duty bound to comply with the guidelines contained in the aforesaid transfer policy and deviation in the said guideline is not permissible when there is no administrative exigency. Therefore the Hon'ble Tribunal be pleased to direct the respondents to produce the relevant records pertaining the transfer and posting of the applicant only with the view of intention to see under what circumstances the impugned transfer order dated 09.03.2007 has been issued in respect of the applicant while the respondents are duty bound to comply with the guideline.

Hemangshu Roy

4.9 That your applicant further begs to say that during the year 2005, the applicant was transferred and posted from Dibrugarh Division by the transfer order dated 01.08.2005 bearing letter No. 19/2005 without considering his option submitted for choice station posting in terms of the transfer policy 2005 and also on the ground that his wife is suffering from osteoarthritis and as such it is difficult for his wife to stay at a high altitude place at Shillong. Being aggrieved with the order of transfer, the applicant approached this Hon'ble Tribunal through O.A. No. 206/2005, however, the Learned Tribunal disposed of the O.A No. 206/2005 on 05.08.2005 at the admission stage.

The applicant thereafter submitted a detailed representation on 12.08.2005 enclosing the copy of the judgment and orders of the learned Tribunal on the ground that the order of transfer and posting dated 01.08.2005 should be reviewed, modified in terms of his option submitted for choice station posting in the light of the transfer policy 2005 as well as in terms of the learned Tribunal's order dated 05.08.2005. However, the authority thereafter reviewed the transfer and posting order dated 01.08.2005 and finally transferred and posted the applicant at Tinsukia Central Excise Division and accordingly in terms of the modified order, the applicant joined at Tinsukia on 07.09.2005. It is relevant to mention here that his posting was not considered in any of the choice station as prayed by the applicant. However in compliance of the order of higher authority the applicant joined at Tinsukia on 07.09.2005.

Copy of the transfer order dated 24.08.05 and 25.08.05 are enclosed herewith as Annexure- 7 (Series).

4.10 That it is stated that as per transfer policy of CBEC- 2005 in terms of clause 6.2, ordinarily the tenure of an officer on a sensitive post shall be 2 to 3 years at one stretch. In terms of para 4.8 the officer after completing his tenure in N.E. Region will get preference in posting to stations of their

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choice. In terms of the clause 8.1 in case an officer seeks a posting to a particular station on medical ground, the Board/placement committee is empowered to take a decision on his plea. In the instant case, the applicant have completed only about one and half years in Tinsukia Central Excise Division, when the tenure is 2 to 3 years even the if the Tinsukia Division is treated as sensitive place of posting. However, it is categorically stated that posting at Tinsukia is a non-sensitive posting. But surprisingly all of a sudden, the impugned transfer and posting order No. DOPM AC-DC/53/2007 dated 09.03.2007 and ORDER No. 27/2007 dated 09.03.2007 communicated vide letter No. C. NO. II (3) 6/CCO/SH/2006/3200-214 dated 09.03.2007 has been issued in respect of the applicant whereby the applicant is sought to be transferred from Central Excise, Tinsukia Division to Shillong Central Excise Commissionerate. The impugned order of transfer dated 09.03.07 is an isolated order of posting issued only in respect of the applicant. On a mere reading of the impugned order of posting it would be evident that the same has been passed without any public interest but with an ulterior motive in colourable exercise of power and also with a malafide intention and on that score alone, the impugned order of transfer and posting dated 09.03.2007 is liable to be set aside and quashed.

Copy of the impugned transfer order dated 09.03.2007 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 3.

4.11 That your applicant begs to state that during his tenure at Tinsukia Central Excise Division the applicant has granted the benefit of exemption to M/S Chubwa Tea Estate (Tata Tea Ltd.) P.O- Chubwa Dist- Dibrugarh by declaring eligible to get the benefit of exemption on the amount of the Central Excise duty covering the period from 08.07.99 to 28.02.2003 in terms of Govt. Notification No. 33/99 C.E dated 08.07.1999 and vide order bearing No. DIB/DIV/REF/ACD/ 01/2005-06 dated 10.05.2005. However the said order of declaring eligibility is provisional subject to outcome of

J. Hemangshi R. I.A.S.

findings of pre-audit. The said order dated 10.05.2005 was subsequently forwarded by the applicant to the Joint Commissioner (Audit) Central Excise, H.Q. Dibrugarh with a copy to the Commissioner, Central Excise, Dibrugarh for information vide letter No. C. No. V (18) 09/REF/ACD/2004/1777-80 dated 11.05.2005. Again vide letter No. C. No. V (18) 09/REF/ACD/2004/1834 dated 16.05.2005 the applicant submitted the particulars of the refund file for pre-audit as per the norms fixed in terms of letter containing instructions bearing No. C. No. II (30) 4/MCWD/HQRS-AUDIT/DIB/03/2678-82 dated 18.03.2003. Surprisingly, the Superintendent (Audit Branch) of Dibrugarh Central Excise Commissionerate, informed the applicant that the Commissioner of Central Excise, Dibrugarh is pleased to withhold pre-audit clearance in respect of the claim of Chubwa Tea Estate on the ground the said claim has been filed after the period envisaged in the notification No. 33/99-CE dated 08.07.99 and also cited the reference of the Hon'ble Supreme Court case of M/S Ginni Filaments, wherein it is held that exemption notification has to be read strictly so far as eligibility is concerned and further stated that the ratio of the said judgment of the Hon'ble Supreme Court is squarely applicable to the facts of the refund claim. The applicant after receipt of the aforesaid communication bearing letter No. C.No. V (14) 19/Pre-Audit/DIB/2005/193 dated 27.05.2005 submitted a detailed reply vide letter bearing No. C. No. V (18) 09/REF/ACD/2004/2257 dated 29.06.2005 wherein the applicant given the detailed explanation quoting the relevant provision of the Govt. instructions, rules, notification of the CBEC, New Delhi, Govt. of India. The applicant also stated in his letter dated 29.06.05 that he is receiving regular reminder from the assessee to clear the refund otherwise interest have to be paid as per their claim dated 28.06.05 received on 29.06.05 and under the above circumstances the applicant after proper verification when found that the said unit fulfilled all the norms and criteria for grant of eligibility for exemption of the refund of the amount on account of Central Excise duty

Hemangshu R. Saha

paid as per notification No. 33/99 CE dated 08.07.99. It is also relevant to mention here that the Tata Tea Ltd. vide their letter dated 28.06.05 issued another reminder to the applicant treating claim of overall interest @ 10 % per annum which will stand to Rs. 7,84,906/- under such circumstances the applicant after detail scrutiny of the Tata Tea Ltd. declared the eligibility for grant of exemption on account of Central Excise Duty paid in terms of notification dated 08.07.99. Under such circumstances the applicant declared the eligibility for grant of exemption after giving natural justice to the Assessee i.e. M/S Chubwa Tea Estate. However, the Joint Commissioner of the office of the Commissioner of Central Excise, Dibrugarh vide letter bearing No. V (14) 19/Pre-Audit/DIB/2005/8670 dated 25.07.2005 informed the applicant regarding the observation of the Commissionerate. However, in the conclusion it is stated that the applicant is required to pass an order in merit keeping in view the aforesaid position of law and requested to ensure that the principle of natural justice are not violated.

It is relevant to mention here that the applicant being Asstt. Commissioner of the Dibrugarh Central Excise Division is required to pass the order in quasi-judicial capacity keeping in mind the norms, procedures and the requirement of principle of natural justice. However applicant being fully satisfied, granted the refund to M/S Chubwa Tea Estate, a concern of Tata Tea Ltd obtaining undertaking from the claimant to refund the amount to the effect that they shall, pay the entire amount, in the event of Appellate Commissioners decision goes in favour of the department.

Copy of the letter dated 25.07.05 and 27.06.05 are enclosed herewith as Annexure- 9 (Series).

4.12. That it is stated that although the respondent No. 4 withheld the case of refund passed by the applicant in favour of M/S Chubwa Tea Estate but

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surprisingly similar nature of case of Jorhat Central Excise Division in respect of M/S Kakajan Tea Estate, P.O Moriani, Dist- Jorhat, Assam, which was passed in order dated 16.05.05 have been cleared by the same Commissioner i.e. Respondent No. 4 vide letter No. C. No. V(30)79/Appeals/05/20530 dated 27.09.05. Therefore it appears that the Respondent No. 4 has acted in the instant case of the applicant with a hostile discrimination for the reasons best known to her.

Copy of the letter dated 16.05.05 and order dated 03.11.05 are enclosed herewith as Annexure- 10 (Series).

4.13 That it is stated that the Respondent No. 4 preferred a Review Application before the Commissioner, Customs and Central Excise (Appeals) Guwahati against the order of refund passed by the applicant in favour of M/S Chubwa Tea Estate, however the said Review Application has been rejected by the Commissioner (Appeals) Guwahati vide order in Appeal No. 10/CE (A)/GHY/06 dated 31.01.2006. It is relevant to mention here that Commissioner (Appeals) specifically held in paragraph 6 and 7 of his decision that the Appeal is a frivolous appeal and as a result the present case is a misuse of machinery and such tendency needs to be curbed. Therefore it is quite clear that Respondent No. 4 acted in a wrong notion and started harassing the applicant by influencing respondent No. 3 to pass the impugned order of transfer and posting dated 09.03.2007 and on that score alone the impugned order of transfer and posting dated 09.03.2007 is liable to be set aside and quashed.

Copy of order dated 31.01.06 is enclosed herewith and marked as Annexure- 11.

4.14 That it is stated that vide memorandum bearing No. 55/2006 dated 22nd/25th September 2006 a departmental proceeding has been initiated against the applicant under Rule 14 of CCS (CCA) Rules 1965, wherein in

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the statement of Article of charge it has been alleged that the applicant while functioning as Asstt. Commissioner of Central Excise of Dibrugarh during the period from 2005-05 and 2005-06 sanctioned refund claim of Rs. 1,10,61,418/- covering the period from 08.07.1999 to 28.02.2003 in favour of M/S Chubwa Tea Estate, Dibrugarh by single sanction order knowing fully well about the provisions of Board's Circular dated 15.03.2002 even after receipt of the direction from the then Commissioner to withheld the clearance of the subject claim, bifurcated the same on month wise basis and sanctioned a claim of refund amounting to Rs. 77,52,409/- in gross violation of period advise tendered by the Commissioner, Central Excise, Dibrugarh. The applicant immediately after receipt of memorandum dated 22/25 September 2006 submitted a detailed reply to the President of India on 15.11.2006, wherein the applicant given a detailed explanation and firmly stand by his decision granting eligibility for exemption, in favour of M/S Chubwa Tea Estate in terms of Govt. of India's notification No. 33/99-CE dated 08.07.99 rather the applicant also quoted the order of Joint Commissioner dated 25.07.2005 wherein he has been directed to pass an order on refund claim on merit. The applicant after detail consideration of the claim for refund of M/S Chubwa Tea Estate and after being fully satisfied that the assessee is entitled to refund as claimed within the period of limitation passed necessary order, granting eligibility in favour of M/S Chubwa Tea Estate in exercise of power vested under Section 33 of the Central Excise Act 1944 conferred on the applicant. Be it stated that the applicant has passed the order on refund claim by the M/S Chubwa Tea Estate in exercising quasi judicial power vested upon him and as such the Authority cannot find fault with the applicant even assuming but not admitting that the order passed by the applicant in favour of M/S Chubwa Tea Estate is not in conformity with the Rule, it may at best be termed as erroneous judgment passed by the applicant while exercising quasi judicial power vested upon him. But the Authority, more particularly the respondent No. 4, who has

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directed the applicant to pass the order on merit, in fact initiated the impugned order of transfer and posting dated 09.03.2007 in respect of the applicant and at her instance the Chief Commissioner has passed the impugned order of transfer dated 09.03.2007 whereby the applicant is now sought to be transferred from Tinsukia to Shillong Commissionerate even before completion of his tenure, the said impugned transfer order has been passed on extraneous consideration with a vindictive attitude against the applicant in colourable exercise of power. It is pertinent to mention here that as per relevant provision of the Central Excise Act 1944, if the department is aggrieved by any order passed in the case of claiming refund the authority are at liberty under Section 35 E of Central Excise Act 1944 to prefer an appeal before the Appellate Authority but unfortunately in the instant case the Authority at the instance of Respondent No. 4 initiated a disciplinary proceeding against the applicant under Rule 14 of the CCS (CCA) Rules 1965 and simultaneously issued the impugned transfer and posting order dated 09.03.07. It is also relevant to mention here that the applicant has given a detailed reply against the memorandum of charge sheet dated 22/25.09.2006 and the same is now pending with the Authority for further decision in the meanwhile the Chief Commissioner has issued the impugned order of transfer dated 09.03.07 without any public interest transferring the applicant from Tinsukia Central Excise Division to Shillong Central Excise Commissioner, hence the impugned transfer order is punitive in nature and the same has been passed with a malafide intention and on that score alone the impugned order of transfer and posting dated 09.03.07 is liable to be set aside and quashed.

It is specifically stated that the impugned transfer order has not yet been affected till filing of this Original Application, as such the Hon'ble Tribunal be pleased to stay the operation of the impugned order of transfer and posting dated 09.03.2007 till disposal of the Original Application.

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Copy of the memorandum dated 22nd/25th September 2006 and reply dated 15.11.2006 are annexed herewith as Annexure- 12 and 13 respectively.

4.15 That it is stated that the impugned order of transfer dated 09.03.07 have been issued by the Respondent No. 3 with a malafide intention in order to take revenge against the applicant as because he has granted eligibility in favour of M/S Chubwa Tea Estates as stated above. On a mere reading of the impugned transfer order dated 09.03.07 it would be evident that no one is posted in place of the present applicant and it is an isolated order passed in respect of the applicant alone without having any public interest. It is pertinent to mention here that the applicant has come to learn from a reliable source that the impugned order of transfer dated 09.03.07 issued by the Chief Commissioner, Respondent No. 3 at the instance of the respondent No. 4, since the respondent No. 4 got annoyed with the applicant for granting eligibility for exemption in favour of M/S Chubwa Tea Estates. It is pertinent to mention here that at the instance of Respondent No. 4, TA bill of the applicant has been withheld since August 2003 to December 2004 and April 2006 to Oct '06. Therefore the impugned transfer order dated 09.03.07, which is passed in violation of the professed norms, transfer policy 2005 in colourable exercise of power is liable to be set aside and quashed. The Hon'ble Court be pleased to pass an order directing the respondents either to continue the applicant at his present place of posting at Tinsukia till completion of his tenure or post the applicant in any of his choice station as mentioned in paragraph 4.3. More so in view of the fact that the wife of the applicant is still suffering from osteoarthritis.

4.16 That it is a fit case for the Hon'ble Tribunal to interfere with to protect the right and interest of the applicant by passing an appropriate order granting the adequate relief to the applicant.

Hemanghi B. J.

4.17. That this application is made bona fide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

5.1 For that the impugned order of transfer and posting dated 09.03.2007 has been passed by the Respondent No. 3 at the instance of Respondent No. 4 in colourable exercise of power without any public interest and the respondent No. 4 being vindictive towards the applicant for issuing eligibility in favour of M/S Chubwa Tea Estate on refund claim has initiated and managed to pass the impugned order of transfer dated 09.03.2007, which is punitive in nature and as such the same is liable to be set aside and quashed.

5.2 For that the applicant has granted eligibility in favour of M/S Chubwa Tea Estate in the case of refund claim in exercising his quasi-judicial power conferred by Section 33 of the Central Excise Act 1944, therefore Authority cannot find any fault with the applicant even assuming but not admitting that the refund order is not in conformity with the rule but the said contention of the Respondent No. 4 has been rejected by the Commissioner (Appeals) Guwahati, vide his order dated 31.01.06. Therefore it appears that there is no infirmity in passing the order of eligibility by the applicant in favour of Assessee and such action of the applicant cannot be a ground for transfer from Tinsukia Division to Shillong Commissionerate even before the completion of normal tenure fixed by the CBEC in their transfer policy 2005.

5.3 For that impugned order of transfer and posting dated 09.03.2007 is highly arbitrary, illegal, unfair and the same has been passed with a malafide intention in order to harass the applicant for passing the refund claim in favour of M/S Chubwa Tea Estate, as such the impugned order of transfer dated 09.03.07 is punitive in nature and on that score alone the same is liable to be set aside and quashed.

Hemangika R. Salo.

5.4 For that at the instance of Respondent No. 4 a memorandum of charge sheet under Rule 14 of CCS (CCA) Rules 1965 has been issued by the Authority against the applicant for passing of the refund claim by the applicant in favour of the M/S Chubwa Tea Estate after being satisfied himself by the applicant that the claim fulfills all the requirements for grant of eligibility for refund as per Govt. of India's notification No. 33/99-CE dated 08.07.99. Therefore passing of such refund claim again cannot be a ground of transfer of the applicant from Tinsukia Division to Shillong Central Excise Commissionerate.

5.5 For that the impugned transfer order dated 09.03.07 is an isolated transfer order passed only in respect of the applicant in total violation of the transfer policy 2005 and professed norms and on the same ground itself the impugned transfer order dated 09.03.07 is liable to be set aside and quashed.

5.6 For that the impugned order dated 09.03.2007 has been passed in total violation of the provision laid down in para 5.8 as well as para 6.2 of the Transfer policy - 2005 within a span of 1 and 1/2 years of posting at Tinsukia Central Excise Division, with a malafide intention and also without providing any opportunity for submission of any further option for choice station posting.

5.7 For that wife of the applicant is suffering from serious ailment of arthritis/osteoarthritis (knees) who cannot move freely and under constant medical treatment, moreover, Shillong being a hill station and a cold place will not suit the health of the wife of the applicant.

5.8 For that applicant submitted series of representation earlier seeking choice posting in view of his wife's serious ailment as well as for other domestic problems since 2003 but the respondents did not consider the said representations as required under the guidelines contained in the transfer policy - 2005 and issued the impugned transfer order dated 09.03.2007 as

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such it is a deliberate violation of the transfer policy issued by the respondents themselves.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that saves and except filing of O.A. No. 206/2005 he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1** That the Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order No. DOPM AC-DC/53/2007 dated 09.03.2007 and ORDER No. 27/2007 dated 09.03.2007 communicated vide letter No. C.NO. II (3) 6/CCO/SH/2006/3200-214 dated 09.03.2007 (Annexure- 8).
- 8.2** That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in his present place of posting at Tinsukia Central Excise Division or alternatively to post the applicant in his choice station after obtaining necessary option in the light of the transfer policy- 2005.

Hiranyakshu Pr. Saha

3.3 Costs of the application.

3.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief:-

9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned transfer and posting order No. DOPM AC-DC/53/2007/dated 09.03.2007 and ORDER No. 27/2007 dated 09.03.2007 communicated vide letter No. C.NO. II (3) 6/CCO/SH/2006/3200-214 dated 09.03.2007 (Annexure- 8).

9.2 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

10.

11. Particulars of the I.P.O

i) I.P.O No. : 284 925097
 ii) Date of issue : 22.01.2007
 iii) Issued from : G.P.O, Guwahati.
 iv) Payable at : G.P.O, Guwahati.

12. List of enclosures :
 As given in the index.

Himangshu R. Saha

VERIFICATION

I, Shri Himangshu Ranjan Saha, son of Late Hem Ranjan Saha, aged about 56 years, working as Assistant Commissioner, Central Excise, Tinsukia Division, Tinsukia, applicant in the instant Original Application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 19th day of March 2007.

Himangshu R. Saha.

2005

**TRANSFER/ PLACEMENT POLICY FOR GROUP 'A' OFFICERS OF
THE INDIAN REVENUE SERVICE (C & CE)**

INTRODUCTION

- 1.1 The Ministry of Finance has taken major initiatives for tax reforms, including reform of tax administration with an emphasis on reducing inter-face between the tax payers and administration; imparting greater transparency and minimizing discretion so as to ensure efficiency and recognition of merit and honesty.
- 1.2 The successful implementation of tax reforms depends on the efficiency of the delivery system. A significant contributor to the effectiveness of the administrative machinery is a credible human resource development policy, which offers opportunities for excellence and career advancement through a proper placement strategy.
- 1.3 The existing placement policy has been in place for over a decade. Based on the experience of its implementation, a review of the present system of transfers and postings was carried out. Accordingly, a new Transfer/ Placement Policy (herein after referred to as the Transfer Policy) for Group 'A' Officers of IRS (C&CE) has been formulated. The new transfer/placement policy shall come into effect from 1st April, 2005.

SALIENT FEATURES OF THIS TRANSFER POLICY

- 2.1
 - a) The salient features of this Transfer are as follows: a) All transfer and postings of Group 'A' officers of IRS (C&CE) shall be effected by the Board/Placement Committee or on their recommendation as stated hereinafter;
 - b) The Transfer policy has been formulated for officers at different levels;
 - c) All stations have been categorized in three classes and tenure of stay in different classes of station has been prescribed;
 - d) All posts have been divided into two categorizes, namely, Sensitive and Non-Sensitive;
 - e) All posts have been categorized as field and non-field posts.
 - f) Guidelines for dealing with different types of "compassionate grounds" cases have been laid down.;
 - g) All annual transfer orders shall be normally issued by 30th April and,

*After
J.W.
Patwari*

in any case, not later than 31st

May of the year

2.2

A correct and complete database is a sine qua non for operationalising the Placement Policy. CBEC shall ensure that the database containing the profiles of all Group 'A' officers is regularly updated.

2.3

All grievances arising out of the implementation of This Transfer Policy shall be addressed in accordance with the guidelines issued by the Department of Personnel & Training, only after the officer has joined his new assignment.

2.4

This Transfer Policy shall not be applicable to the transfer of Chief Commissioners /Directors General.

3.0 THE BOARD/ PLACEMENT COMMITTEE:

3.1

The Board will recommend proposals for posting of Chief Commissioners /Directors General and Commissioners for approval of the Government i.e. Finance Minister through Revenue Secretary and Minister of State (Revenue). Joint Secretary (Administration), CBEC will serve as Secretary to the Board for this purpose.

3.2

The Placement Committee will be the final authority for transfer of officers below the rank of Commissioner, provided the case falls within the purview the existing guidelines. After the proposals are drawn up and approved by the Board, the Chairman shall consult MOS (R) before giving effect to the annual transfers proposals. Approval of the Government will be required in case a deviation from the existing guidelines has to be made.

3.3

The Placement Committee shall consist of the following:

- a) Chairman;
- b) Member (Personnel and Vigilance);
- c) One Member of CBEC to be nominated, in rotation, by the Chairman of the Board for a period of six months; and
- d) Joint Secretary (Admn.) posted in CBEC as its Member-Secretary

3.4

The minutes of the meeting of the Board/Placement Committee shall be drawn up and approved by all Members within 24 hours in a meeting (not by circulation). These must be approved by the competent authority within thirty days.

4.0 TRANSFER POLICY FOR OFFICERS AT DIFFERENT LEVELS

4.1 In case of Commissioners and Chief Commissioners/ Directors General, the Board will recommend both the station of posting and the specific charge.

4.2 Officers below the rank of Commissioner will be placed at the disposal of the Chief Commissioner/ Director General concerned, for further deployment. While considering the officers for further deployment, the Chief Commissioner/Director General shall keep in mind the old cycle of posting of the said officer considering which Board has placed that officer at their disposal.

4.3 The normal practice is transfer on promotion. In individual cases this may give rise to hardship. Hence, this may be decided by the Board/Placement Committee. For this purpose, the grant of Senior Time Scale/Non Functional Selection Grade shall not be treated as promotion.

4.4 Directly recruited / newly promoted Group 'A' officers shall be given intensive training in accountancy for a period of 2-3 months during the period of probation / upon promotion. Upon completion of training, directly recruited officers shall be normally posted to a class 'A' station, whereas the officers promoted from Group 'B' to Group 'A' shall, on promotion, be transferred out of the station in which they were previously working, unless the balance service is less than three years. Further, in view of the sensitive nature of the job, Appraisers, on or after promotion to the post of Assistant Commissioner, will not continue to remain posted in the Commissionerate which exercised jurisdiction over the Customs House on whose cadre they were originally borne.

4.5 As far as possible, an officer shall spend the first nine years of his service on field posts. All posts in the Commissionerates of Customs, Central Excise, Service Tax and the Directorates of Revenue Intelligence and Central Excise Intelligence have been categorized as field posts. Officers upto and including the rank of Commissioners shall ordinarily be posted on field assignments for at least 5, 3 and 2 years respectively, in each of the first 3 decades of their career respectively. During the first six years, the officer shall not ordinarily be given a posting outside the department or sent on a deputation, and should be given exposure in Central Excise, Service Tax and Customs branches, as far as possible. After completing

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six years of service, an officer may be posted to the Board as an Under Secretary.

4.6

As far as possible, the senior most officer may be posted as the Executive Commissioner. However, once posted, a commissioner will not be moved out of the executive charge merely because an officer senior to him has replaced the hitherto junior non-executive Commissioner at that station.

4.7

The officers will, as far as possible, be rotated between the Customs and Central Excise branches every two years and adequate experience in Service Tax branch will also be ensured as far as possible. This shall be done after the Annual Transfers have been effected. At stations where there are separate Chief Commissioners of Central Excise and Customs, a committee of all such Chief Commissioners shall collectively decide on the rotation between the two branches at that station. At other stations, local rotation will be done jointly by the Chief Commissioners who exercise control over the posts located at that station.

5.0 CLASSIFICATION OF STATIONS, FIXATION OF TENURES OF POSTING AND ROTATION BETWEEN THEM

5.1

The various stations where Group 'A' officers may be posted have been categorized as Class 'A', Class 'B' and Class 'C' [Annexure I-III]. Such categorization is based on the twin criteria of revenue collection and the number of Commissioner level posts at a station..

5.2

The categorization of stations may be changed by the Board with the approval of the Government.

5.3

The States in the country have been divided into 4 areas viz. East, West, North and South [Annexure-IV]. An officer shall not serve in an 'area' for more than a total of 14 years (hereinafter referred to as a cycle) during his entire tenure up to and including the rank of Commissioner of which tenure in an 'A' station shall be for a maximum of 6 years. The tenure shall not be less than four years in a Class 'B' station and not less than two years in a Class 'C' station. The maximum total tenure of an officer in all Class 'A' stations during his service upto and including the rank of Commissioner shall be 16 years. The tenure of posting in Customs Overseas Intelligence Network shall not exceed three years. A stay of more than nine months in a station (to be computed as on 31st December of the previous year) will be treated as a complete year, and the length of the period of stay

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shall be counted from the date of joining. An officer posted in Class 'A' or 'B' station can opt to move to a lower category station after he has completed at least half his tenure in that station.

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5.4 An officer shall be rotated between the three different classes of stations. After completing one cycle of posting, the officer shall be moved to another area. Further, as far as possible, an officer shall serve in at least two areas of the country viz. North, South, East, and West, during his career upto and including the rank of Commissioner.

It may be clarified that an officer can be posted from a Class 'A' station to a Class 'B' or Class 'C' station (not necessarily in that order) in any other area and vice versa, provided that if he had been posted in that area earlier, a minimum period of 2 years should have elapsed before he can be posted again to the same area (called cooling off period).

5.5 All postings in the Board and deputation to technical posts in the Department of Revenue, Central Economic Intelligence Bureau (CEIB), Enforcement Directorate, Authority for Advance Rulings (AAR), Competent Authorities (CAs), Appellate Tribunal for Forfeited Property (ATFP), Customs, Excise and Service Tax Tribunal (CESTAT) and Settlement Commission shall not count towards calculation of stay at a particular station/area but may be so counted at the option of the officer. However, an officer who has been on deputation to any one of the aforesaid bodies shall not ordinarily be considered for another deputation to any of the aforesaid organizations. When an officer applies for clearance for a posting on deputation, his previous history of postings will be considered while giving cadre clearance. An officer shall invariably be transferred out of the station in which he was on deputation on his return.

5.6 In order to encourage officers to seek postings in Class 'C' station, the Government shall sanction:

- a) At least one vehicle for office use in every Class 'C' station irrespective of the level of the officer heading the office; and
- b) 100 per cent housing facilities at the Officer level to the extent possible.
- c) The starting point for

computing the stay in Class 'A'
'B' or 'C' station shall be the
date of joining at the station.

7.1 Joint Secretary (Admn.) posted in CBEC as its Member-Secretary

5.8 The officers after completing their tenure in North Eastern Region (Assam, Sikkim, Meghalaya, Mizoram, Manipur, Nagaland, Arunachal Pradesh and Tripura), Jammu and Kashmir, NACEN and its RTIs and Vigilance Directorate and CESTAT will get preference in posting to stations of their choice.

5.9 When a certain number of officers are due for moving out of a station to a new station or by local rotation to new postings in the same station for the reason of having completed their tenure, but cannot be so moved due to inadequate number of vacancies available, the officer who has served for longer periods will be moved first.

5.10 The station of the posting will be taken as the actual place where an officer is posted and not head quarters of Commissionerate/ Directorate to which the officer is posted.

6.0 CATEGORISATION OF POSTS INTO SENSITIVE AND NON-SENSITIVE

6.1 All posts in CBEC have been classified into sensitive and non-sensitive with the approval of the Government: [Annexure-V]

6.2 Ordinarily, the tenure of an officer on a sensitive post shall be two to three years at one stretch.

7.0 POSTINGS IN DIRECTORATES OF REVENUE INTELLIGENCE, CENTRAL EXCISE INTELLIGENCE, VIGILANCE AND SYSTEMS (CBEC)

7.1 In the Directorates of Revenue Intelligence, Central Excise Intelligence, Vigilance and Systems, the respective Director General will propose a panel of names for the consideration of the Board/Placement Committee. Individual officers will be selected by the Board/Placement Committee, which will also indicate their station of posting.

7.2 The maximum length of tenure in the Directorates of Revenue Intelligence, Central Excise Intelligence and Vigilance will be three years, subject to the condition that no officer shall spend more than six years in these Directorates during his entire service career.

8.0 POSTING ON COMPASSIONATE GROUNDS

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8.1 In case an officer seeks a posting to a particular station on medical grounds, the Board/Placement Committee is empowered to take a decision on his plea. However, if required, the Board/Placement Committee may refer the case to a Medical Board.

8.2 In case of working couples, if the spouse of an officer is working outside the Department, posting in the same station may be allowed subject to the instructions issued by the Department of Personnel & Training on this issue.

8.3 In case where the spouse is also an officer of the Department, both the officers should be posted to the same station, if they are otherwise eligible, provided that, jointly, they do not occupy more than 50 per cent of the posts in that station.

9.0 TRANSFER ON ADMINISTRATIVE GROUNDS OR IN PUBLIC INTEREST

9.1 Notwithstanding anything contained in this policy, Government may, if necessary in public interest, transfer or post any officer to any station or post;

9.2 An officer against whom the CVC has recommended initiation of vigilance proceedings, should not normally be posted or remain posted at the station where the cause of the vigilance proceedings originated. He shall also not be posted on a 'sensitive' charge. This restriction will remain in operation till such time the vigilance matter is not closed.

10.0 AVAILMENT OF EARNED OR STUDY LEAVE AFTER ISSUANCE OF TRANSFER ORDERS

An officer under orders of transfer shall be granted Earned Leave or Study Leave only after he has joined his new place of posting. The period spent on Earned Leave or Study Leave will not count towards computation of tenure in that station or 'cooling off' period. Officers who proceed on Earned Leave or Study leave without completing the minimum tenure prescribed for the station/area will have to rejoin the same station for completing the prescribed tenure. In other cases the Board/Placement Committee will decide their posting after the rejoin on completion of the Earned leave/Study leave.

Annexure-I

CLASS 'A' STATIONS

1. Mumbai (including Thane and Belapur)
2. Delhi (including Faridabad, Gurgaon, NOIDA and Ghaziabad)
3. Chennai
4. Kolkata
5. Bangalore
6. Hyderabad
7. All posts in the Customs Overseas Intelligence Network (COIN)

Annexure-II

CLASS 'B' STATIONS

S.No.	STATION
1.	AHMEDABAD

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- 2. ALLHABAD
- 3. MANGALORE
- 4. COCHIN
- 5. BHUBANESHWAR
- 6. INDORE
- 7. RAIPUR
- 8. TRICHY
- 9. MEERUT
- 10. VIZAG
- 11. JAIPUR
- 12. CHANDIGARH (INCLUDING JALLANDHAR)
- 13. PATNA
- 14. LUCKNOW
- 15. KANPUR
- 16. RAIGARH
- 17. PUNE
- 18. VADODARA
- 19. GOA
- 20. SURAT
- 21. JAMNAGAR
- 22. KANDLA
- 23. LUDHIANA
- 24. NAGPUR
- 25. NASIK
- 26. RANCHI
- 27. RAJKOT

Annexure-III

CLASS 'C' STATIONS ANNEXURE-IV

S.No.	STATION
1.	AMRITSAR
2.	AURANGABAD
3.	BELGAUM
4.	BHAVNAGAR
5.	BHOPAL
6.	BOLPUR
7.	CALICUT
8.	COIMBATORE
9.	DAMAN

-29-

38

10. DIBRUGARH
11. GUNTUR
12. GUWAHATI
13. GWALIOR
14. HALDIA
15. HAZARIBAGH
16. JAMMU & KASHMIR
17. JAMSHPUR
18. JODHPUR
19. MADURAI
20. MYSORE
21. PUNCHKULA
22. PONDICHERRY
23. ROHTAK
24. SALEM
25. SHILLONG
26. SILIGURI
27. TRIVANDRUM
28. TIRUNELVELI
29. TIRUPATI
30. TUTICORIN
31. VAPI

REMAINING CITIES(OTHER THAN CLASS
'A' AND CLASS 'B' STATIONS)

Annexure-IV

North Zone: Jurisdictional areas of Chief commissioners of Customs & Central Excise of Chandigarh, Delhi, Jaipur, Lucknow, Meerut (falling in the States of J&K, Himachal Pradesh, Punjab, Uttaranchal, U.P, Delhi, Haryana, Rajasthan & Union Territory of Chandigarh)

East Zone: Jurisdictional areas of Chief Commissioners of Customs & Central Excise of Bhubaneshwar, Kolkata, Ranchi, Shillong, Patna (falling in the States of Bihar, Orissa, Jharkhand, West Bengal, Meghalaya, Nagaland, Assam, Sikkim, Manipur, Mizoram & Union Territory of Andaman & Nicobar).

West Zone: Jurisdictional area of Chief Commissioner of Customs & Central Excise of Ahmedabad, Mumbai, Pune, Vadodara, Nagpur & Bhopal (falling in the States: Gujarat, Maharashtra, Goa, Madhya Pradesh, Chhattisgarh & Union Territory of Daman & Diu)

South Zone: Jurisdictional area of Chief Commissioner of Customs & Central Excise of Bangalore, Chennai, Cochin, Coimbatore, Hyderabad, Mangalore, Visakhapatnam (falling in the States of Andhra Pradesh, Karnataka, Tamil Nadu, Kerala & Union Territory of Pondicherry & Lakshadweep)

Annexure-V

Categorization of posts into sensitive and non-sensitive: The following posts have been categorized as sensitive and non-sensitive:

A. Customs Commissionerate

S.No.	Group 'A' post	Section/Branch	Category
1.	Commissioner		Sensitive
	Commr.(Gen.)		Sensitive
	Commr.(Appeals)		Non-Sensitive
	Commr.(Adj.)		Non-Sensitive
	Addl./Jt. Commr./DC/AD	Preventive	Sensitive
		Legal	Non-Sensitive
		Rummaging & Intelligence	Sensitive
		SII8	Sensitive
		Air Intelligence	Sensitive
		Airport	Sensitive
		Town Intelligence	Sensitive
		All Appraising Groups	Sensitive
		Docks/Shed	Sensitive
		Statistics	Non-Sensitive
		Audit	Non-Sensitive
		Review	Non-Sensitive
		Tribunal	Non-Sensitive
		MCD	Non-Sensitive
		All other charges which do not involve regular dealings with the public	Non-Sensitive

B. Central Excise Commissionerate

S.No.	Group 'A' post	Section/Branch	Category
1.	Commissioner		Sensitive
	Commr.(Appeals)		Non-Sensitive
	Commr.(Adj.)		Non-Sensitive
	Addl./Jt. Commr./DC/AD	Anti-Evasion	Sensitive
		Legal & Adjudication	Non-Sensitive

C. Directorates

S.No.	Group 'A' post	Section/Branch	Category
1.	All posts in DGRI		Sensitive
2.	All posts in DG (V)		Sensitive
3.	All posts in Central Bureau of Narcotics		Sensitive
4.	All posts in DGCEI		Sensitive
5.	All posts in CDR Office		Non- Sensitive
6.	All other Directorates		Non- Sensitive

*Attest
for Advocate*

32
FAX/SPEED POST

41

OFFICE OF THE CHIEF COMMISSIONER
CENTRAL EXCISE & CUSTOMS
SHILLONG ZONE
NORTH EASTERN REGION

3rd Floor, Crescens Building, MG Road, Shillong - 793001,
Phone: 0364-2500131. Fax: 0364-2224747.

E-mail: ccshill@excise.nic.in EDECS :- (zone18)

C.N.O. 8/11/CCO/SH/2004

Dated : 26th April, 2005

The Commissioner
Central Excise
Shillong/Dibrugarh

The Commissioner
Customs(Preventive)
N.E.R., Shillong.

The Commissioner(Appeals)
Central Excise & Customs
Guwahati

Sir/Madam,

Subject : *Annual General Transfer of Group 'A' Officers –
Regarding.*

I am directed to refer to DOPM's letter F.No.8/11/B(Data bank)/OPM/2004 dated 23.04.2005 alongwith enclosures (5 nos) on the above subject with a request to circulate the same to all Group 'A' Officers due for transfer at your jurisdiction for indicating their option as per guidelines. In this regard you are also requested to kindly submit the desired report as per proforma - I and verified proforma - II for initiating further necessary action latest by 28th April, 2005.

Yours faithfully,

Apalak Das

(APALAK DAS)
ASSISTANT COMMISSIONER

C.N.O. 8/12/FT/COMM/DIB/03/ 5050 - 58

Dated:- 26/4/05

Copy good information and necessary action to :-

1. The Officer on Special Duty to Commissioner, Central Excise, Dibrugarh.
2. The Additional Commissioner (Tech.)/Joint Commissioner, Central Excise Hqrs. Dibrugarh.
3. The Deputy Commissioner (Audit) Central Excise Hqrs. Dibrugarh.
4. The Dy/Assistant Commissioner, Central Excise, Dibrugarh, Dibrugarh/ Jorhat/Razpur Division.

He is requested to submit "Proforma-II" duly filled return FAX.

J.P.
(M. R. MOKHTARI)
Additional Commissioner (P&V)
Central Excise, Dibrugarh.

fw

*After
for
not
involve*

33-2005

Annexure - 3

**OFFICE OF THE ASSISTANT COMMISSIONER CENTRAL EXCISE
DIBRUGARH DIVISION**

C.No. I(11)ACD/CON/DIB/2004/1608

DT. 28.04.2005

To

*The Additional Commissioner (P&V)
Central Excise, HQs.
Dibrugarh.*

Sub: Annual General Transfer of Group 'A' Officers- Reg.

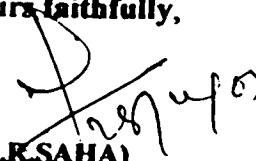
Sir,

Please refer to your endt. Letter issued under C.No.II(3)12/ET/COMMR/DIB/03/5050-58 dt. 28.04.2005 on the above subject.

With reference to the above I am submitting my transfer proforma in proforma - II for your perusal and necessary action please.

Enclo : One sheet

Yours faithfully,


(H.R.SAHA)
**ASSISTANT COMMISSIONER
CENTRAL EXCISE, DIBRUGARH**

*Attested
for
Advocate*

34

PROFORMA-II
TRANSFER PROFORMA

Annexure-3

1. (a) Name of the Officer : SRI H. R. SAHA
 (b) Sl. No. in Civil List : 435 Of Civil list 2003.
 (c) Designation : Assistant Commissioner
 (d) Comm'te/ Dte./Office in which working &/or posted at present : Dibrugarh Central Excise Division under Dibrugarh Central Excise, Commissionerate, Dibrugarh.
 (e) Date from which posted in the present Comm'te/Dte. : 18/12/2002
 (f) Date of birth : 16/03/1951
 (g) Name of the Home Town & State : SILCHAR, Dist. Cachar, Assam

2. History of posting since entry into the Group 'A' IC&CES service in the prescribed proforma:

Sl.No.	Post Held	Chief Comm'te/Dte. Gen/Dte.	Comm'te	Station	Date	
					From	to
1.	ASSISTANT COMMISSIONER	SHILLONG ZONE	DIBRUGARH	DIBRUGARH	18/12/2002	Till date.

3. If you want posting to a station, name the five different stations in order of preference and give reasons

1. SILCHAR (HOME TOWN)
2. GUWAHATI (CENTRAL EXCISE)
3. KOLKATA AIRPORT
4. I.G.I.AIRPORT, NEW DELHI
5. KANDLA

4. If your spouse is employed and you seek posting to a particular station or, retention at the same place, give complete details of such employment, designation of spouse, pay and whether the job is transferable or not.

: N/A

5. Other relevant information, if any

: Mentioned in my representation already submitted to the Chief Commissioner Customs & Central Excise, Shillong Zone

Note: Options only in respect of stations will be entertained and requests for specific posting in a particular station not be considered.

(H.R.SAHA)
ASSISTANT COMMISSIONER
Signature of the officer
With designation

Station:DIBRUGARH

Date: 28.04.2005

Controlling Officer's comments

The particular given in Col. 1&2 above are verified and found correct.

Signature of the officer
With designation

Advance copy forwarded for information and necessary action to:-

The Chairman, Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi.

(H.R.SAHA)
ASSISTANT COMMISSIONER

*After 3rd
JUL 2005
H.R.SAHA*

Annexure-4



**OFFICE OF THE CHIEF COMMISSIONER
CENTRAL EXCISE & CUSTOMS
SHILLONG ZONE
NORTH EASTERN REGION**

3rd Floor, Crescens Building, MG Road, Shillong - 793001,
Phone: 0364-2500131. Fax: 0364-2224747.

E-mail:- ccshill@excise.nic.in EDECS :- (zone18)

ORDER No. 19/2005

Dated, Shillong the 1st August, 2005

Consequent upon transfer and posting in the Grade of Deputy/ Assistant Commissioner vide Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, New Delhi's Office Order Nos.94/2005 and 119/2005 communicated under F.No.22013/7/2005-Ad-II dated 21st June, 2005 and 27th July, 2005, the following posting/adjustment/rotation is hereby ordered with immediate effect and until further order.

Sl. No.	Name of the officer(s)	From	To
1.	Prabhanjan Kumar Mishra	DGICCE, Mumbai	Shillong CX. Hqrs.
2.	A.K. Mandal - II	Kolkata Customs	Digboi CX. Division
3.	Bikash Ranjan Deb Roy	Kolkata CX	Silchar CX. Division
4.	Gopi Nath Dutta	Kolkata CX	Karimganj, CUS. Division
5.	Bholanath Das Gupta	Kolkata Customs	Shillong CX. Division
6.	Ajit B. Awasthi	Indore CX	Dibrugarh CX. Hqrs.
7.	Ashish Bijoy Dutta	Siliguri CX	Dibrugarh CX. Division
8.	B.P. Sinha	DGCEI, Kolkata	Guwahati CX. Division
9.	C.D. Baidya	Nagaon CX. Division	Dhubri CX. Division
10.	H. Sukla Baidya	Silchar CX. Division	CUS. Hqrs. Shillong
11.	M.C. Hazarika	Dibrugarh CX. Hqrs.	Jorhat CX. Division
12.	R. Lalngurauva	Shillong CUS. Hqrs.	Aizawl CUS. Division
13.	K.B. Bhujel	Jorhat CX. Division	Imphal CUS. Division
14.	H.R. Saha	Dibrugarh CX. Division	Shillong CX. Hqrs.

Further, Shri B.P. Sinha will hold additional charge of Nagaon CX. Division. Shri M.C. Hazarika will hold additional charge of Tezpur CX Division, Shri A.K. Mandal - II will hold additional charge of Tinsukia Division and Shri K.B. Bhujel will hold additional charge of Dimapur CUS. Division till further orders.

Sd/-
(J.S.R. KHATHING)
CHIEF COMMISSIONER

*Attest'd
for
Ranjan
Dutta*

36 -

Dated : 1st August, 2005

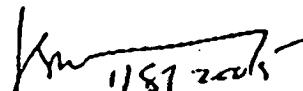
1 - AUG 2005

45

C.N.o.U(3)9/CCO/SH/2005/ 61869-897

Copy forwarded for information and necessary action to :-

1. The Member(P&V), CBEC, North Block, New Delhi - 110 001.
2. The Member (CX), CBEC, North Block, New Delhi - 110 001.
3. The Member (Customs), CBEC, North Block, New Delhi - 110 001.
4. The Member (L&J), CBEC, North Block, New Delhi - 110 001.
5. The Joint Secretary (Admn.), CBEC, North Block, New Delhi-110001.
6. The Commissioner(DOPM), Customs & Central Excise, 412-A, Deep Shikha Building, Rajendra Place, New Delhi - 110 008.
7. The Commissioner of Central Excise, Dibrugarh
8. The Commissioner of Central Excise, Shillong.
9. The Commissioner, Customs (Prev), N.E.R, Shillong
10. The Commissioner (Appeals), Central Excise & Customs, Guwahati
11. The Chief Account Officer, Central Excise, Shillong/Dibrugarh & Customs(P), Shillong.
12. The Pay and Accounts Officer, Customs & Central Excise, Shillong.
13. Shri H. R. SAHA Deputy/Assistant Commissioner.



(J.S.R. KHATHING)
CHIEF COMMISSIONER

✓ He
 2005
 Sept 1-2

Dr. S. Palchoudhury
M. B. B. S. A. H. S.
REG. NO. : 2914 (A.M.C.)
Consulting Physician :

Annexure - 5 (Series)

- 37 -

34244 (03842)
22694 (03843)

45

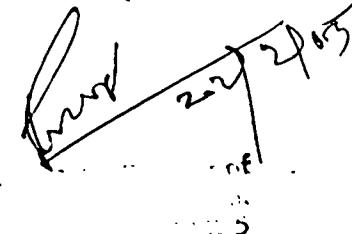
Date 27/10/01

Clinical

Impression :

Reported that Mrs. Bheresh Sabu wife of Mr.
A. R. Sabu, resident, 2nd Link Road, Sullur
has been suffering from osteoarthritis (Knee)
+ Pneumonitis.

She is advised to take regular
regular check up for assessment of
her convalescence. It is also advised
to have an attendant during the
movement which is restricted following
the above condition of her knee.



Attock
Advocate

Dalchowdhury
M.B.B.S. A.H.S.
G. 4914 (A.V.C.)
Consulting Physician:

Annexure - 5 (Series)

221244
34244 (038421)
22694 (038441)

38 -

47

Date 8/12/03

Clinical

Impression:

certified that Mrs. Bhurabhi Saha
w/o Mr. H. R. Saha residing at
2nd Lane Rd, Silchar is suffering
from Osteoarthritis (Knees) - Gout
Bromwell Syme syndrome.

I consider that rest for 45 days
with spiro is absolutely necessary
in order to restore her health.

8/12/03

From: Deptt. of
Health & Family
Planning, Govt. of
Assam, Guwahati

Affected
Jnt.
Advent

Dr. A. B. Nag
B.Sc, MEdBS (Guwahati)
ASSAM HEALTH SERVICE
Regd. No. 8091 (AMC)

-39-

Annexure -5
(series)

Date..... 27/2/05.....

u/s

For..... To whom it may concern.

Certified that Mrs. Bharati Saha
W/o. Sri H-R. Saha of 2nd Lane Road
Silchar is suffering from Osteoarthritis
Ischemic Heart disease and is undergoing
treatment w.e.f 27/02/05.

She is advised to remain in complete
rest for 30 (thirty) days w.e.f 27/02/05
to 28/03/05 and to continue the treatment
till recovery.


27/02/05
Senior Medical & Health Officer
S. S. & S. Civil Hospital
Silchar

Attest
for
perovate

40

49

To

The Chief Commissioner,
Central Excise
Kolkata.

(Through Proper Channel)

Respected Sir,

Most respectfully and humbly I beg to state the following facts for favour of your kind and sympathetic action.

That Sir, vide Ministries Order No.206/2002 dt.10.12.2002 I have been transferred and posted on promotion as Assistant Commissioner in Dibrugarh Central Excise Commissionerate (Assam).

That Sir, my home town is Silchar in the District of Cachar (Assam). Before getting promotion, as Superintendent, I was posted in Silchar, Central Excise Division where I could not complete the tenure and I got promotion & posted to Dibrugarh Central Excise Commissionerate which is about 300 Km. away from my town.

That Sir, I have been all along posted away from my Home Town SILCHAR throughout my 27 (twenty seven) years of Service.

That Sir, I have only one marriagable daughter for whom I am trying to find suitable match for her marriage. I belong to Bengalee community, I am searching a groom for her in that local area only. She is also appearing B.A. (Hons.) final exam from Silchar College under Assam University, Silchar. My present posting in Dibrugarh has jeopardised this endeavour and I have to keep my wife and daughter in Silchar

..p/2.

*A. H. Sarker
Advocate*

- 41 -

for this arrangement. And therefore, I have to maintain 2 (two) establishments. That Sir, with this end in view, before getting promotion I got my posting in Silchar.

That Sir, my wife is a sick woman, it has been almost humanly not possible to keep her in Silchar with my grown up daughter, but for my posting in Dibrugarh under compulsion.

That Sir, it is needless to mention that I am running my family in this deplorable condition as this has severly told upon my health and now I am suffering from Hypertension and also I cannot put my ability for the best performance in the discharge of my assigned duties.

That Sir, in the circumstances, I pray to your goodself to be kind enough to consider my case of transfer judiciously to SILCHAR from Dibrugarh.

And for the act of your kindness I shall remain ever grateful to you.

Thanking you,

Yours faithfully,

Encl :

1. Medical Certificate.

Dt : 03/03/2003.


(H.R. SAHA)

Assistant Commissioner

Central Excise

Dibrugarh Commissionerate.

Copy to :

The Chairman, Central Board of Excise & Customs
Ministry of Finance, Dept. of Revenue
Govt. of India, New Delhi - for favour of
kind information and necessary sympathetic action.

(H.R. SAHA)

*Attested
for reference*

- 42 -

To,
 The Chief Commissioner,
 Central Excise,
 Shillong Zone, Camp Kolkata.

[Through proper channel]

Respected Madam,

Most respectfully and humbly I beg to state the following few facts for kind and sympathetic consideration.

That Madam, vide Ministry's Order No 206/2002 dated 10-12-2002 I have been transferred and posted on promotion as Assistant Commissioner in Dibrugarh Central Excise Commissionerate(Assam).

That Madam, my home town is Silchar in the district of Cachar (Assam). Before getting promotion as Superintendent, I was posted in Silchar Central Excise Division where I could not complete the tenure and I got promotion & posted to Dibrugarh Central Excise Commissionerate which is about 900 Kms. away from my town.

That Madam, I have been all along posted away from my home town SILCHAR throughout my 27(twenty seven) years of service.

That Madam, my wife is a sick woman, an arthritis patient, it is very difficult for her to look after the house alone with two children, the daughter who is appearing B.A(Hons) final examination from Silchar College under Assam University, Silchar, where courses are different from other universities of N.E states and for whom I am trying to find a suitable match. I belong to Bengalee community. I am searching a groom for her in that local area only.

That Madam, the younger son is also studying in class - IX this year at Silchar School So, at this stage it is not wise to disturb him from the present school of Silchar. My present posting in Dibrugarh has jeopardised everything.

So, to look after the children my wife has to stay at Silchar and it has been almost humanly not possible to look after the family in absence of a male member by her but for my posting in Dibrugarh under compulsion.

That Madam, it is needless to mention that I am running my family in this deplorable condition as this has severely told upon my health and now I am suffering from hypertension and also I cannot put my ability for the best performance in discharging my duties.

That Madam, in the circumstances, I pray to your goodself to be kind enough to consider my case of transfer judiciously from DIBRUGARH to SILCHAR, as the present Assistant Commissioner has completed more than 2 years tenure at Silchar.

And for the act of your kindness I shall remain ever grateful to you.

Thanking you,

Enclo:-

(1) Medical Certificate

Yours faithfully,

7519/07
 (H.R.SAH)
 Assistant Commissioner,
 Central Excise, Dibrugarh

*Affesto
 Atul
 Advocate*



43- OFFICE OF ASSISTANT COMMISSIONER OF CENTRAL EXCISE
DIBRUGARH DIVISION,

Milannagar, P.O. C.R. Building, Dibrugarh-786003 (Assam)

Ph: 0373-2314353 FAX: 0373-2314394 :

E-mail: cdt7401@excise.nic.in

Dated 08/11/2004.

C.No. I(II)1/ESTT/ACD/2004/ 4255

Annex-
6 (Series)
52

To
The Chief Commissioner,
Customs and Central Excise,
Shillong Zone,
Shillong.

(Through the Commissioner, Central Excise Commissionerate, Dibrugarh)

Respected Sir,

Kindly refer to my representation dated 27/06/2003 which was forwarded by the Commissioner, Central Excise, Dibrugarh on 04/07/2003 and my submission before your honour on 03/12/2003 at Shillong and again on 15/03/2004.

Most respectfully and humbly I beg to state the following few facts for your kind and sympathetic consideration.

That Sir, vide Ministry's Order No.206/2002 dated 10/12/2002 I have been promoted as Assistant Commissioner and posted in Dibrugarh Central Excise Commissionerate (Assam) and joined on 18/12/2002.

That Sir, my home town is SILCHAR in the district of Cachar (Assam). Before getting promotion as Superintendent, I was posted in Silchar Central Excise Division where I could not complete the tenure as I got promotion and posted in Dibrugarh Central Excise Commissionerate. Prior to this I was posted on deputation to Narcotics Control Bureau, Regional Unit, Imphal from May 1996 to September 1999.

That Sir, I have been all along posted away from my hometown Silchar throughout my 27 years of service.

That Sir, my wife is a sick woman, an arthritis patient who can't move properly. It is very difficult for her to look after the house alone with two children, the elder daughter who has passed the B.A. (Hons) from Assam University, Silchar and as a father my first and foremost duty to arrange her marriage immediately and for that if I posted at Silchar, I can keep contract in this purpose properly.

That Sir, The young sons is also studying in class X standard this year at Silchar Kendriya Vidyalaya and will appear the C.B.S.C final Examination next March 2005, as a father my presence at Silchar at this juncture is very much require to look after the young boy and for his future.

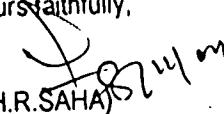
So, to look after the children's my wife has to stay at Silchar and it has been almost humanly not possible to look after the family in absence of a male member by her as arthritis patient but for my posting in Dibrugarh under compulsion.

That Sir, it is needless to mentioned that I am running my family in this deplorable condition as this has severely told upon my health and now I am suffering from Heart disease, Diabetics and Hypertension from last two years, and also I can't put my ability for the best performance in discharging my duties. I need Diabetic diets and proper nursing which only can get if I am posted in SILCHAR. I am also completing Two years tenure posting in Dibrugarh by 17th December 2004.

That Sir, in the circumstances, I pray your good self to be kind enough to consider My case sympathetically by transferring me from DIBRUGARH to SILCHAR as the present Assistant Commissioner of Silchar Central Excise Division has already completed more than THREE years in Silchar.

And for that act of your kindness I shall remain ever grateful to you.

Yours faithfully,


(H.R. SAHA)
ASSISTANT COMMISSIONER.
CENTRAL EXCISE, DIBRUGARH.

Advance copy submitted for kind information and necessary action to:-
The Chief Commissioner, Central Excise and Customs, Shillong Zone, Shillong.


(H.R. SAHA)
ASSISTANT COMMISSIONER
CENTRAL EXCISE, DIBRUGARH.

*Attested
from Advocate*



FAX NO. : ++++++

Aug 24 2005 05:12PM P2

57

Annexure 7 (series)

OFFICE OF THE CHIEF COMMISSIONER
CENTRAL EXCISE & CUSTOMS
SHILLONG ZONE
NORTH EASTERN REGION

3rd Floor, Crescens Building, MG Road, Shillong - 793001,
Phone: 0364-2500131. Fax: 0364-2224747.

E-mail:- ccshill@excise.nic.in EDECS :- (zone18)

ORDER No. 38/2005

Dated, Shillong the 24th August, 2005

In partial modification of this office Order No. 19/2005 communicated under C.No. II(3)9/CCO/SH/2005/61869-97 dated 1st August, 2005 following transfer and posting in the grade of Deputy/ Assistant Commissioner is ordered with immediate effect until further orders.

Sl. No.	Name of the officer(s)	From	To
1	H. Sukla Baidya	Silchar CX. Division	Imphal CUS. Division
2	K.B. Bhujel	Jorhat CX. Division	Shillong CX. Hqrs.
3	H.R. Saha	Dibrugarh CX. Division	Tinsukia CX. Division

Sd/-
(J.S.R. KHAATHING)
CHIEF COMMISSIONER

C.No.II(3)9/CCO/SH/2005

Dated : 24th August, 2005

Copy forwarded for information and necessary action to :-

1. The Member(P&V), CBEC, North Block, New Delhi - 110 001.
2. The Member (CX), CBEC, North Block, New Delhi 110 001.
3. The Member (Customs), CBEC, North Block, New Delhi - 110 001.
4. The Member (L&J), CBEC, North Block, New Delhi - 110 001.
5. The Joint Secretary (Admn.), CBEC, North Block, New Delhi-110001.
6. The Commissioner(DOPM), Customs & Central Excise, 412-A, Deep Shikha Building, Rajendra Place, New Delhi - 110 008.
7. The Commissioner, Customs (Prev), N.E.R., Shillong
8. The Commissioner of Central Excise, Dibrugarh
9. The Commissioner of Central Excise, Shillong.
10. The Commissioner (Appeals), Central Excise & Customs, Guwahati
11. The Chief Account Officer, Central Excise, Shillong/Dibrugarh & Customs(P), Shillong.
12. The Pay and Accounts Officer, Customs & Central Excise, Shillong.
13. Shri ... H.R. Saha Deputy/Assistant Commissioner.

24/8/2005
(J.S.R. KHAATHING)
CHIEF COMMISSIONER

Attest
for
Advocate



- 45 -

Annexure-I (series)

54

GOVT. OF INDIA

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
DIBRUGARH

Milan Nagar, Lane 'F', P. O. : C. R. Building, Dibrugarh - 786 003
Ph. : 0373-2314081, Fax : 0373-2315257, 2314079, Ph. : 2310793, E-mail : com74

RELIEVE ORDER

Dated Dibrugarh, the 25th. August, 2005.

In pursuance of Order No. 38/2005 dated Shillong, the 24th August, 2005 of Chief Commissioner, Customs & Central Excise, Shillong issued under C.No. II(3)9/CCO/SH/2005, dated 24th August, 2005, the following officers in the grade of Deputy/Assistant Commissioner are hereby relieved of their duties w.e.f. 25-08-2005 (A/N) to enable them to report for duty at their new places of posting.

Sl. No.	Name	New Place of Posting
01.	Shri K.B. Bhujel, Deputy Commissioner	Shillong C.Ex. Hqrs.
02.	Shri H.R. Saha, Assistant Commissioner	Tinsukia C.Ex. Division

Sd/-
(M.R. MOHANTY)
Joint Commissioner(P&V)

C.No. II(3)8/ET-II/CCE/DIB/2005/ 13021-38

Dated : 25/08/05

Copy forwarded for information & necessary action to :-

01. The Chief Commissioner, Customs & Central Excise, 3rd Floor, Crescens Building, M.G. Road, Shillong - 793 001.
02. The Commissioner, Central Excise, Morello Compound, M.G. Road, Shillong - 793 001.
03. The Commissioner, Customs (Preventive), North Eastern Region, M.G. Road, Shillong.
04. Shri K.B. Bhujel, Deputy Commissioner, Central Excise, Jorhat Division. He is hereby directed to hand over the charge of Jorhat Division to Shri M.C. Hazarika, Deputy Commissioner. A copy of the Order No. 38/2005 dated 24-08-2005 is enclosed.
Enclo. : 1 (One)
05. ✓ Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh Division. He is hereby directed to hand over the charge of Dibrugarh Division to Shri M.C. Hazarika, Deputy Commissioner. A copy of the Order No. 38/2005 dated 24-08-2005 is enclosed.
Enclo. : 1 (One)
06. ✓ Shri M.C. Hazarika, Deputy Commissioner, Central Excise Hqrs., Dibrugarh. He is hereby directed to take over the charge of Dibrugarh and Jorhat Division in addition to his own charges.
07. The Deputy/Assistant Commissioner, Central Excise, Dibrugarh/Tinsukia/Digboi/Jorhat/Tezpur.
08. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
09. The Assistant Chief Accounts Officer, Central Excise Hqrs., Dibrugarh.
10. ET - III/Accts. Br./Bill Br./Confdl. Br./Cash Br., of Commissionerate Hqrs. Office Dibrugarh.


(M.R. MOHANTY)
Joint Commissioner (P&V)

*Attested
from
Hazarika*

OFFICE OF THE CHIEF COMMISSIONER
CENTRAL EXCISE & CUSTOMS
SHILLONG ZONE
NORTH EASTERN REGION

3rd Floor, Crescens Building, MG Road, Shillong - 793001,
Phone: 0364-2500131. Fax: 0364-2224747.

E-mail: ccshill@excise.mca.gov.in EDECS :- (zone18)

55
Annexure-8

ORDER

DOPM AC-DC/33/2007

Dated : 9th March 2007

ORDER NO. 27/2007

Dated : 9th March 2007

The following transfer and Posting Order in the Grade of Deputy Commissioner/Assistant Commissioner under Shillong Zone is issued with immediate effect:

Sl. No.	Name of the Officer	Designation	From	To
1.	Shri H.R. Saha	Assistant Commissioner	Central Excise Tinsukia Division	Shillong Central Excise Commissionerate

Dhrugrao
This issues with the approval of the Chief Commissioner, Customs & Central Excise, Shillong.

(ABHILASHA MAHAPATRA)
DEPUTY COMMISSIONER

9/3/07

C. No. II(3)6/CCO/SH/2006/

30/02/2007

Dated :- 9th March 2007

Copy forwarded for information and necessary action to:

1. The Member (P & V), CBEC, North Block, New Delhi - 110 001
2. The Member (CX), CBEC, North Block, New Delhi - 110 001
3. The Member (Customs), CBEC, North Block, New Delhi - 110 001
4. The Member (L & I), CBEC, North Block, New Delhi - 110 001
5. The Joint Secretary (Admn), CBEC, North Block, New Delhi - 110 001
6. The Commissioner (DOPM), Customs & Central Excise, 412-A, Deep Shikha Building, Rajendra Place, New Delhi- 110 008, with reference to his office letter F.No. 8.1-DB/OPM/2007 dated 09-03-2007.
7. The Commissioner of Customs (Prev), N.E.R., Shillong.
8. The Commissioner of Central Excise, Dibrugarh
9. The Commissioner of Central Excise, Shillong
10. The Commissioner (Appeals), Central Excise & Customs, Guwahati
11. The Chief Account Officer, Central Excise, Shillong /Dibrugarh & Customs (P), Shillong.
12. The Pay and Accounts Officer, Customs & Central Excise, Shillong
13. Shri H.R. Saha, Assistant Commissioner, Tinsukia Division for compliance.

(ABHILASHA MAHAPATRA)

GOVT. OF INDIA

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
DIBRUGARH

Monogram, Lane T, P.O. : C - R Building, Dibrugarh - 786 003, Assam
Tel : 0373-2314081, Fax : 0373-2315257, E-DECS : com7-0

No. V(18)09/Pc Audit/DIB/2005/

Date : 25/07/2005

To:

The Assistant Commissioner,
Central Excise,
C.R. Building,
Dibrugarh - 786 003.

Chitralekha

Sub : Refund claim of Rs. 1,10,61,418.00 in respect of M/s. Chubwa T.E., Pre-Audit –
Regarding.

Please refer to your letter C No. V(18)09/REF/ACD/2004, dated 29.06.2005, on the subject
mentioned above

The issued raise by you in the aforementioned letter have been examined in this office and the
observations are as under

1. The Hon'ble Apex Court's observations in the case of M/s. Ginni Filament, even though made in
relation to a matter of a 100% EOU, has application in respect of exemption notifications in general in so
far as the observations, e.g., that an exemption notification has to be read on its own terms, conditions
therein cannot be ignored, and exemption notification has to be read strictly so far as eligibility is concerned,
cannot be viewed as an order in personam. Besides, similar view had also been taken by the Hon'ble
Apex Court in other cases, reported at 1978 (2) ELT J 350 and 1995 (77) ELT 474. Such views of the
Hon'ble Apex Court cannot be dismissed summarily.

2. In the case of M/s. Shivdham Industries, reported at 2002 (141) ELT 272, the Tribunal, while
observing that an exemption under the Notification No. 33/99-CE, dated 08.07.1999 is not automatically
defeated if the refund is not filed within the period of 7 (seven) days, also observed that the claim of refund
in any case has been filed within the period prescribed under Section 11B.

3. In the case of M/s. Raghuvan India Ltd., reported at 2000 (118) ELT 311, while dwelling on the issue
of limitation where none is prescribed in the statute, the Hon'ble Supreme Court observed that, "It is not for
the court to import any specific period of limitation by implication, where there is really none, though courts
may always hold when any such exercise of power have the effect of disturbing rights of a citizen that it
should be exercised within a reasonable period." In the case of Corporation Bank, reported at AIR 2000
SC 76, the Supreme Court, on the issue of reasonable period, held that in respect of claim of money,
specific period in the Limitation Act should be considered as reasonable time. For your benefit, relevant
portions of the Limitation Act, 1963 is reproduced below :

– Section 3(1) of the said act provides that, "Subject to the provisions contained in Sections 4 to 24
(inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall
be dismissed, . . ." Section 3(2)(a)(i) states that, for the purposes of this act – a suit is instituted, – in an
ordinary case, when the plaint is presented to the proper officer. The Sl. No. 113 of Part X (suits for which
there is no prescribed period) of the schedule to the Limitation Act, containing first division suits provides
a limitation of 3 (three) years from the date when a right accrues.

Your attention is invited to this office letter of even No. dated 27.06.2005, vide which the
Commissioner's decision to withhold pre-audit clearance in respect of this particular claim of refund was
conveyed to you. In view of the foregoing discussion, no reconsideration of the said decision appears to
be necessary. You are required to pass an order on merits, keeping in view the aforesaid position of law.
Please ensure that the principles of natural justice are not violated.

This issues the approval of the Commissioner

Revised
Chitralekha
Superintendent (VIG.),
Central Excise,
Dibrugarh.

After 7 W. Advocate

J. P.
(M.R. MOHANTY)
Joint Commissioner

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OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE

AUDIT BRANCH, DIBRUGARH

Dr. Lila Gogoi Path, Dibrugarh - 786003.
Ph No. 0373 - 2312870, Fax No. 0373 - 2315257.
E-mail - Comm74.

382 52
Annexure - 9 (series)

C.No.: V(14)19/Pre-Audit/DIB/2005/193

Date: - 27-06-05

To.

The Assistant Commissioner
Central Excise
Dibrugarh.

OFFICE OF THE
CENTRAL EXCISE
COMMISSIONER
OF CENTRAL EXCISE

294

Sir.

DIBRUGARH

Subject:- Refund claim of Rs. 1,10,61,418.00 in respect of M/s Chubwa Tea Estate
- Pre - Audit - Regarding

Please refer to your letter C.No. V(18)09 REF/ACD/2004 1834, dated 16-05-2005
on the subject mentioned above.

In this connection, I am directed to inform that the Commissioner of Central Excise, Dibrugarh, is pleased to withhold pre-audit clearance in respect of the claim of refund of Rs. 1,10,61,418.00 filed by M/s Chubwa T.E. on the ground that the said claim has been filed after the period envisaged in the Notification No. 33/99, dated 08-07-1999. It is also brought to your notice that the Hon'ble Supreme Court in the case of M/s Ginni Filaments, reported at 2005(181) ELT 145 has held that "Exemption Notification has to be read strictly so far as eligibility is concerned". The ratio of the said judgement of the Supreme Court is squarely applicable to the facts of this refund claim.

File No. V(18)26/REF/ACD/2004-05 containing pages from 1 to 520 and Note Sheet Pages I to III is returned herewith.

Your's faithfully,

Endo:-As above

ATTESTED

Superintendent (VIO.)
Central Excise,
Dibrugarh.

Boral
27-06-05

(G.K.Sharma Boral)
Superintendent

Attestd
for
Advocate



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GOVT. OF INDIA
OFFICE OF DEPUTY COMMISSIONER
CENTRAL EXCISE DIVISION

JORHAT

M/s Kakaon Tea Estate, P.O. Mariani, Dist. Jorhat, Assam, holder of Central Excise Registration have
Certificate No. AABCT0602KXM011 submitted refund claim under the provisions of Notification No. 33/99-CE dated 8.7.99 from the period 25.7.99 after said to have increased install capacity by over 25% in terms of Para 2 (b) of the said Notification. And they have also submitted covering documents for procuring additional machineries as well as evaluation report from Registered Chartered Engineer.

ORDER

M/s Kakaon Tea Estate, P.O. Mariani, Dist. Jorhat, Assam, holder of Central Excise Registration have
Certificate No. AABCT0602KXM011 submitted refund claim under the provisions of Notification No. 33/99-CE dated 8.7.99 from the period 25.7.99 after said to have increased install capacity by over 25% in terms of Para 2 (b) of the said Notification. And they have also submitted covering documents for procuring additional machineries as well as evaluation report from Registered Chartered Engineer.

M/s Kakaon Tea Estate, P.O. Mariani, Dist. Jorhat, Assam, holder of Central Excise Registration have Certificate No. AABCT0602KXM011 submitted refund claim under the provisions of Notification No. 33/99-CE dated 8.7.99 from the period 25.7.99 after said to have increased install capacity by over 25% in terms of Para 2 (b) of the said Notification. And they have also submitted covering documents for procuring additional machineries as well as evaluation report from Registered Chartered Engineer.

The procurement and installation of additional machineries are duly verified by the concerned Range Superintendent and submitted his report on 11.12.2004 and also by the undersigned and found to have procured and installed 1) one Excel Vikram Jumbo CTC machine 2) 4 nos. Trinitea CPM machines 3) one Bedi & Bedi Drier and 4) one 380 KV Generator set.

Now, the question before the undersigned whether:-

- 1) Whether the assessee has submitted a statement of duty paid through PLA (Account Current) to the jurisdictional Assistant/ Deputy Commissioner by the 7th of the next month in which the duty has been paid from the Account Current.
- 2) The delay in submission of claim is hit by bar of limitation in terms of Section 11B of central Excise Act 1944.
- 3) Whether overall installed capacity has increased over 25% of installed capacity.

As for the point at Sl. No. 1, it is found that the party has submitted monthly statement in the form of RT 12 regularly and the Commissioner (Appeals) and hon'ble Tribunal have treated this as valid claim for refund.

Further, the submission of statement on duty paid from Account Current is procedural infractions and benefit of exemption cannot be denied for non-observation of such requirements.

For point 2, the issue regarding delay in submission of refund claim has been settled by a number of decisions of the Appellate Commissioner as well as by the Tribunal. It has also been clarified that this exemption benefit has been granted under an independent Notification and does not come under the ambit of Section 11B and this is substantiate by the following case laws and orders.

- a) Shivedham Industries (P) Ltd. {2002 (141) ELT 272 (T)}
- b) Order No. A-246/Kolkata/2001 in case of Vinay Cement Ltd.
- c) Order No. A-319-321/Cal/2001 dated 22.05.2001 in case of K.K. Beverages (P) Ltd.
- d) O-I-A No. 38/CE(A) Ghy/04 dated 8.4.2004 in case of M/s Dusflaghar T.E., M/s Nahorani T.E. & M/s Tarajulie T.E.

And all these appellate orders have been duly accepted by the Hon'ble Commissioner, central Excise, Dibrugarh.

The Central Board of Excise & Customs, New Delhi under F.No. 354/B/90-TRU (Pt-II) dated 06.10.99 has categorically clarified that refunds under Notification No. 33/99-CE does not attract the provisions under Section 11B and does not prescribe time limit.

*Afternoon
Advocate*

And as for the point at S1 No. 3 the undersigned is a revenue officer and not competent enough to go into the intricacies of manufacturing process. But a Chartered Engineer is technically skilled and has made a detailed study on the subject and acquired adequate knowledge on the subject. And in support of expert's report the following case laws are cited.

- (a) Mangal Textile Mills (P) Ltd. [2002 (49) R.L.T 265 (Guj)].
- (b) Sriganesh Texlab Ltd. [2002 (143) ELT 183]
- (c) Panama Chemical Works [1992 (62) ELT 241 (MP)]
- (d) Life Line System (P) Ltd. [1998 (33) ELT 699 (T)]

The Ministry's letter F. No. 07/5/2002 - CX6 dated 05.03.03, CBEC Circular No. 772/5/2004 - CX dated 21.01.2004 clarify that there is no requirement of increase in every sections of a tea factory. Increase in installed capacity by over 25% of installed capacity by addition of machineries in any section will make them eligible for the benefit of exemption in terms of Para 2, (b) of the Notification No 33/99-CE dated S.7.99. And they have also submitted covering documents for the evaluation report from Registered Chartered Engineer.

Since, 3 (Three) points as stated earlier have been discussed and found that the assessee have fulfilled all conditions. Now, as per Instruction No. 01/2002 dated 12.04.2004 the jurisdictional Assistant/ Deputy Commissioner required to make a comparative study of installation of additional/ new machineries which would result in increase in installed capacity of the unit as specified in Clause 3 (b) of the exemption Notification.

I have personally verified the installation of additional/ new machineries in comparison to previous layout ground plan and also checked documents for procurement of such machineries and satisfied that these additional, machineries are installed and as for increase in installed capacity by over 25% is duly substantiated by the evaluation report of Registered Chartered Engineer, of the next month in which the increase in installed capacity is different.

On the strength of Paras discussed above, I am of the opinion that the assessee has fulfilled the conditions laid down at Para 2 (b) of the exemption Notification No. 33/99-CE dated S.7.99 and eligible for exemption w.e.f. 25.07.99 which is the date of commencement of commercial production after installation of additional machineries.

(The party has submitted the comparative study of installed capacity before the Hon'ble Central Board of Revenue, Dibrugarh, dated 16-5-2005)

(K.R.BHUJEL)

DEPUTY COMMISSIONER

C.No.V(18)112/ACJ/REF/2004/ 2001- U. - Observation of : Dated: 16-5-05

Copy forwarder for information and necessary action to:-

1. The Commissioner, Central Excise, Dibrugarh.
2. The Deputy Commissioner (Audit), Central Excise, Dibrugarh.
3. M/s Kakajan T.E., P.O. Nakachari, Dist. Jorhat, Assam.
4. The Superintendent, Central Excise, Mariani Range.



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GOVT. OF INDIA
OFFICE OF THE DEPUTY COMMISSIONER
CENTRAL EXCISE DIVISION: JORHAT
Station Godown Road, Jorhat 785001
Phone/Fax: 0376 2320006 E-mail: div7403 & cenexjor@sancharnet.in

Annexure - 10

(Series)

ORDER
NO. 69

Dated:
Place: Jorhat

M/s Kakajan T.E., P.O. Mariani, Dist. Jorhat, Assam, holder of Central Excise Registration No. AABCT0602KXM011 (Hereinafter called as 'the said applicant'), an unit registered with the Central Excise Department to manufacture 'Tea including Tea Waste' falling under Central Excise Tariff sub-heading No. 0902.00 of the Central Excise Tariff 1985. The said applicant has submitted refund claims of duty covering the period from 08.07.1999 to 28.02.2003 for the total amount of Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only paid through their PLA No. SH/103 with this Office in terms of the Notification No. 33/99-CE dated 08.07.1999 (Details as per annexure).

On scrutiny of the submitted documents it has been found that the said applicant have been existing one and have undertaken substantial expansion by way of increase in installed capacity of their factory by more than 25% on or after 24.12.1997. Therefore, *prima facie*, it has been found that the said M/s Kakajan T.E., P.O. Mariani, Dist. Jorhat are entitled for the benefit as provided under clause 3 (b) of the Notification No. 33/99-CE dated 08.07.1999. Their case has been considered by this office vide Order under C.No. V(18)112/ACJ/REF/2004/2001-4 dated 16.05.2005. The date of eligibility of exemption in terms of the said Notification was determined w.e.f. 25.07.1999 in the said order dated 16.05.2005.

The refund claims in question have been verified with the relevant PLA, TR-6 & invoices etc. as submitted by the applicant. The month wise statements of accounts as submitted by the applicant were verified and found that the applicant have debited an amount of Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only against payment of CENVAT/BED during the period from 25.07.1999 to 28.02.2003 in PLA A/C No. SH/103. So, a sum of Rs. 1,18,86,282.00 is found to be admissible for refund. The provisions in terms of the Notification No. 65/03-CE dated 06.08.2003 have also been examined and found that the total debit in PLA amounting to Rs. 1,18,86,282.00 is found eligible for sanctioning of refund. During the period under consideration, the said applicant paid the Central Excise duty against clearance of their goods from the CENVAT credit account amounting to Rs. 23,81,113.00 (Rupees twenty three lakhs eighty one thousand one hundred and thirteen) only. The said amount is not liable to be considered for refund.

Therefore, Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only paid through PLA, taken for consideration for refund, on furnishing an undertaking by the said applicant, to pay the entire amount in case the Commissioner (Appeals) decides the case in favour of the Department, to avoid interest burden as already claimed by the applicant, vide their letter dated 06.08.2005 and as per direction of the Joint Commissioner, Central Excise, Dibrugarh vide letter C.No. V(30)79/Appeals/05/20530 dated 27.09.2005.

In view of the above, I do hereby sanction refund provisionally amounting to Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only clubbing together all the monthly claims for the period from 25.07.1999 to 28.02.2003 to M/s

*S. S. Kakajan
Advocate*

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Kakajan T.E., P.O. Mariani, Dist. Jorhat, Assam, in terms of the Notification No. 33/99-CE dated 08.07.1999 covering the period from 25.07.1999 to 28.02.2003 subject to post-audit.

The subject refund of Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only is hereby sanctioned in terms of the Notification No. 33/99-CE dated 08.07.1999 after verification of eligibility and payment particulars. Any excess/erroneously refunded amount will be demanded as provided under the Notification No. 33/99-CE dated 08.07.1999 and the said applicant is liable to pay back the entire amount if so demanded under the Central Excise Laws.

I order accordingly.


(M.C. HAZARIKA)
DEPUTY COMMISSIONER

C.No.V(18)112/ACJ/REF/2004/ 4083

Dated:- 3/11/05

Copy to: M/s Kakajan Tea Estate, P.O. Mariani, Dist. Jorhat, Assam for information.


(M.C. HAZARIKA)
DEPUTY COMMISSIONER

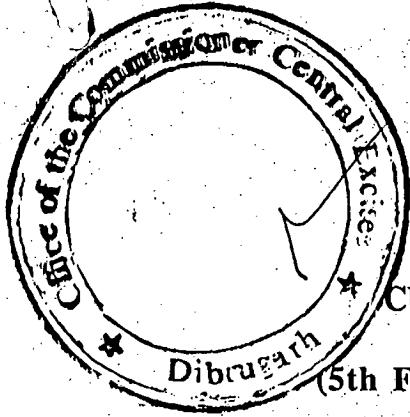
C.No.V(18)112/ACJ/REF/2004/ 4084-86

Dated:- 3/11/05

Copy forwarded for information and necessary action to:

1. The Commissioner, Central Excise, Dibrugarh.
2. The Joint Commissioner (Audit), Central Excise, Dibrugarh along with copy of PLA, TR-6 and statement of duty paid for the period from 25.07.1999 to 28.02.2003.
3. The Assistant Chief Accounts Officer, Central Excise, Dibrugarh.


(M.C. HAZARIKA)
DEPUTY COMMISSIONER



SC (Appeal)

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Annexure-11

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GOVT. OF INDIA
OFFICE OF THE COMMISSIONER
CUSTOMS AND CENTRAL EXCISE (APPEALS)
UDYOG VIKASH BHAWAN
(5th FLOOR), BHANGAGARH :: GUWAHATI- 781005

F.No.V(09)2/XAP-37/RA/DB/2005/

ORDER-IN-APPEAL NO.10/CE(A)/GHY/06/

Date 31.1.06

Passed by: Sri A. K. PAWAR Commissioner, Customs and Central Excise (Appeals), Guwahati. Issued on :

Arising out of Order-in-original .No. 14/Ref/04-05 Dated 5.8.05 passed by the Assistant Commissioner , Central Excise, Dibrugarh.

Name & Address of the Appellants : The Assistant Commissioner, Central Excise, Dibrugarh.

1.(a) A revision application under Sec. 35 EE of the Central Excise Act,1944 shall lie to the Central Govt. and may be addressed to the under Secretary ,Revision Application Unit, Govt. of India, Ministry of Finance, Deptt. of Revenue, 4th floor, Jeevan Deep Building, Sansad Marg, New Delhi-110001 in respect of an order passed by the Commissioner (Appeals) under Sec. 35A of the Central Excise Act. 1944 where such orders are of the nature referred to in the first provisio to Sub-Section (1)of Sec. 35B of the Central Excises Act, 1944. These orders relates to cases of goods lost in transit or during processing, rebate of duty of excise on goods exported or on excisable materials used in the manufacture of goods exported or goods imported outside of India (except to Nepal and Bhutan) without payment of duty.

(b) In terms of Sub-Section (3) of Sec.35EE ibid the application to the Central Government shall be filed within three months from the date of communication of the order to the applicant against which the application is being filed.

(c) The application shall be made in from EA-8 in duplicate and shall be filed in themanner

contd....p/2

Attested
for
Advocate

as specified in 9 read with Rule 10 of Central Excise (Appeals) Rules, 2001 in terms of Sub-section 3 of Section 35EE of the Central Excise Act, 1944 the application shall be accompanied by fee of Rupees Two Hundred if the amount of duty and interest demanded fine or penalty levied is one lakh Rupees or less ; and Rupees one thousand if the amount of duty and interest demanded fine or penalty levied is one lakh Rupees

2(a) In any other case, the appeal shall lie under section 35B of the Central Excise Act, 1944 to the Central Excise and Service Tax Appellate Tribunal at Bamboo Villa, 169, A.J.C. Bose Road, Kolkata -700014 within three months from the date on which the order sought to be appealed against is communicated.

(b) The appeal to the Appellate Tribunal should be filed in Form E.A. 3 in quadruplicate and shall be accompanied by 4 (Four) copies of the order appealed against (one of which at least shall be certified copy) and four copies (one of which at least shall be certified copy) of the order of the adjudicating authority.

(c) The appeal should be accompanied by a fee of (i) Rupees One thousand if the amount of duty and interest demanded, fine or penalty levied is Five lakh rupees or less; (ii) Rupees Five thousand if the amount of duty and interest demanded, fine or penalty levied is more than Five lakh rupees but not exceeding fifty lakh rupees; (iii) Rupees ten thousand if the amount of duty and interest demanded, fine or penalty levied is more than fifty lakh rupees, paid through a cross Bank Draft drawn in favour of the Assistant Registrar of the Bench of the Tribunal on a Nationalised Bank payable at Kolkata and the demand draft shall be attached to form of appeal.

(d) Every application made before Appellate Tribunal (i) in an appeal for grant of stay or for rectification of mistake or any other purpose; or (ii) for restoration of an appeal or an application shall be accompanied by fee of Five hundred rupees.

(e) The appeal shall be presented in person to the Register or an officer authorised to the Registrar, in the office of the Central Excise and Service Tax Appellate Tribunal or shall be sent by Registered post addressed to the Registrar or such authorised officer.

3. Court fee stamp of Rs. 2/- is required to be affixed on memorandum of appeal and 0.50 paise on copy of the order appealed against.

4. Attention is also invited to Rule covering these and other related matters contained in Central Excise (Appeals) Rules, 2001 and Customs, Central Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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F.NO. : V(09)2/XAP-37/RA/DIB/2005.

Appellant : The Assistant Commissioner , Central Excise , Dibrugarh.

Respondent : M/S. Chubwa Tea Estate .

The present Review Application is directed against the Order-in-Original No. 14/Ref/ 05-06 dated 5.8.05 passed by the Assistant Commissioner , Central Excise , Dibrugarh.

2. Facts of the case in brief are : The respondent filed a refund claim for an amount of Rs. 1,10,61,418/- for the period from 8.7.99 to 28.2.03 in terms of Notfn. No. 33/99-CE dated 8.7.99 . The Assistant Commissioner under his Order No. DIV/DIB/Ref/ACD/01/05-06 dated 10.5.05 held that the appellant is eligible for exemption under Notfn. No. 33/99 -CE dated 8.7.99 as amended. Thereafter the Assistant Commissioner vide the impugned order sanctioned a refund of Rs.77,52,409/- . The Commissioner in the Review Order dated 5.9.05 communicated under C.No. V(30) 159/Appeals /05 held that the order passed by the Assistant Commissioner was not legal and proper and directed the Assistant Commissioner to file appeal before this forum . The Assistant Commissioner is grounds of appeal submitted that the Assistant Commissioner 's order is liable to be set aside on the following grounds :

On scrutiny of order dated 5.8.2005 it was observed that the Assistant Commissioner erred in relying on the decisions passed by the Hon'ble Tribunal insofar as nothing in the order indicated that it was the case of a first claim under the notification to which the issue of eligibility was also interlinked . Besides the Hon'ble Tribunal in the case of M/S. Shividham industries (P) Ltd case [2003 (141) ELT 242 (T)] recognized the importance of time limit prescribed under 11B of the CEA , 1944 . They are also of the opinion that the adjudicating authority did not take into account the limitation prescribed under the Limitation Act, 1963 which is the general law of the land on the issue of limitation and has application in all cases where the specific statute does not provide for limitation. Since the Limitation Act , 1963 provides for a time limit of three years from the date when the right to sue accrues , cases where refund applications have been made before the proper officer beyond a period of three years from the date of accrual of such right are clearly time barred . Further , the adjudicating authority had ignored the doctrine of strict construction of fiscal statutes . The notification under consideration provides for a time limit for making refund claims. Therefore it is contended that the Apex Court's ruling in M/S. Ginni Filaments case [2005 (181) ELT 145] that exemption notification has to be read on its own terms is squarely applicable to the matter under consideration. It was also observed that in an identical case involving M/S. Napuk T.E. & M/S. Muttrapore T.E. an appeal filed by the Department against Order-in-Appeal No. 13/CE(A)/GHY/2005 dated 23.2.2005 is sub-judice before the Hon'ble CESTAT.

3. The case was posted for hearing on 31.1.06 . The appellant vide his letter No. V(2) 5/Appeals /Misc/ACD/2005/263 dated 30.1.06 intimated that the grounds of appeal may be considered in this regard . Copy of the appeal petition was sent to the respondent and they were also asked to appear for hearing on 31.1.06 . They submitted written submissions vide their letter dt. 24.1.06 and requested to waive their personal presence.

4. I have carefully gone through the case records and respondent's written submissions in lieu of personal hearing. I find that the Commissioner in the Review order did not specify the points arising out of the order which are to be determined by this forum. The Commissioner vide the Review Order directed the Assistant Commissioner to file appeal on the basis of statement of facts and grounds of appeal appended to the order. But no such grounds of appeal determined by the Commissioner was filed with the appeal petition . The review application suggests that the grounds of appeal are filed by the Assistant Commissioner himself . Section 35E(2) requires that Commissioner herself should determine the points on which basis the impugned order is held to be illegal and improper and should specify the points to be determined in appeal. The Assistant Commissioner cannot form the grounds of appeal. The Review Application is liable to be

set aside on this ground alone. This view is fortified by the Hon'ble Tribunal's decision in the case of Ballarpur Industries Vs CC [2000 (126) ELT 965 (I)].

5. I find the impugned order clearly reflects that the refund was granted to the appellant on the basis of Assistant Commissioner's order No. DIV/DIB/Ref/ACD/01/05-06 dated 10.5.05. It is also recorded in the impugned order that the respondents' eligibility for exemption under Notification No. 33/99-CE dated 8.7.99 as amended was determined w.e.f. 8.7.99 in the order dated 10.5.05. It is not the case of the Assistant Commissioner that the order has been challenged before any legal forum. I also find that the first contention in grounds of appeal is that the Assistant Commissioner erred in relying on the decisions passed by the Hon'ble Tribunal but I do not find that any such decision has been relied upon in the impugned order. This clearly shows that this contention in grounds of appeal is utterly baseless. The other contention in the grounds of appeal are also not sustainable as those are not the subject matter of the order impugned before me. The grounds raised in the Review Application are therefore baseless.

6. The Review Application clearly shows that it was filed without application of mind. The Ministry in Circular under F.No. 390/164/92-JC dated 2.12.92 observed that the Tax Reforms Committee chaired by professor Raja J. Chelliah had observed in the Final Report that the Resources of the Department and Tribunal should not be wasted by filing frivolous appeals and the Ministry desired that tendency to go in for frivolous appeals be checked. Undoubtedly filing of frivolous appeals as in present case is a misuse of machinery and such tendency needs to be curbed.

7. I also find that the Respondent's written submissions filed in lieu of personal hearing are in the matter of delay in submission of refund claim, limitation under the Limitation Act, 1963 and contempt for non-implementation of specific orders, directions and decisions of the judicial and higher quasi-judicial authorities none of which is the subject matter of the present appeal. I therefore hold that these submissions are not at all relevant for the present case.

8. For the reasons recorded above I uphold the impugned order and reject the Review Application.

Attest.

Superintendent (Appeals)
Customs & Central Excise
GUWAHATI

C.NO. V(09)2/XAP-37/R.A/DIB/2005/

DATE ;

To,
The Assistant Commissioner,
Central Excise, Dibrugarh.

M/S. Chubwa Tea Estate,
P.O. Chabua, Dist. Dibrugarh.

Sd/-
(N.PHUKAN)
SUPERINTENDENT (APPEALS)

- 57 -

(24/6/06)

C.NO.V(09)2/XAP-37/RA/DB/2005/

DATE: 15/6/06

Copy forwarded for information & necessary action to :

1. The Commissioner, Central Excise, Dibrugarh
2. Guard File / Office Copy.

(N.PHUKAN)
SUPERINTENDENT
CUSTOMS & CENTRAL EXCISE (APPEALS)
GUWAHATI

F. No.C.14011/27/2006-Ad.V/4725

Government of India

Ministry of Finance

Department of Revenue

New Delhi, the 22nd September, 2006

25th

MEMORANDUM

No.55/2006

The President proposes to hold an enquiry against Shri H.R.Saha, Assistant Commissioner of Central Excise, under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III and IV).

2. Shri Saha is directed to submit within 10 days of the receipt of this Memorandum a written statement defence and also to state whether he desires to be heard in person.
3. Shri Saha is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Shri Saha is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS(CCA) Rules, 1965, or the orders/directions issued in pursuance of the said Rules, the Inquiring Authority may hold the inquiry against him ex-parte.
5. Attention of Shri H. R. Saha is invited to Rule 20 of CCS (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of the matter pertaining

Attn: Advocate

to his service under the Government . If any representation is received on behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Saha is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

Ans

(S.P. Roy)

Under Secretary to the Govt. of India

To

✓ Shri H.R. Saha,

Assistant Commissioner of Central Excise.

(Through: Commissioner of Central Excise, Dibrugarh)

Encl: (i) Copy of documents listed in Annexure III.

(ii) CVC' advise.

STATEMENT OF ARTICLES OF CHARGE
FRAMED AGAINST SHRI H.R. SAHA,
ASSISTANT COMMISSIONER, CENTRAL EXCISE, TINSUKIA.

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Shri H.R. Saha, while functioning as the Assistant Commissioner of Central Excise, Dibrugarh during the period 2004-05 and 2005-06 sanctioned refund claim of Rs.1,10,61,418 (covering the period from 8.7.1999 to 28.2.2003) in favour of M/s. Chubwa Tea Estate, Dibrugarh vide single sanction order knowing fully well about the provisions of Board's Circular No.627/18/2002-CX dated 15.3.2002. Shri Saha, even after receipt of direction from the then Commissioner to withhold the pre-audit clearance of the subject claim, bifurcated the same on month-wise basis and sanctioned a claim of refund amounting to Rs.77,52,409.00 (Rupees seventy seven lakhs fifty two thousand four hundred nine) in gross violation of the pre-audit advice tendered by the Commissioner of Central Excise, Dibrugarh.

2. By the aforesaid act, the said Shri H.R. Saha, Assistant Commissioner, Central Excise, Tinsukia failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant. He, thus contravened Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules,1964 as well as an act of willful insubordination or disobedience to a lawful and reasonable order of a superior.

*Abijit J. Deka
Advocate*

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ANNEXURE-II

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Statement of the imputation of misconduct by which Article of Charge is proposed to be sustained against Shri H.R.Saha, Assistant Commissioner, Central Excise, Tinsukia.

1. Shri H.R. Saha, Assistant Commissioner, Central Excise, Tinsukia, while working as the Assistant Commissioner, Central Excise, Dibrugarh, forwarded a draft refund order of Rs. 1,10,61,418.00 to the Joint Commissioner (Audit), Central Excise, Dibrugarh, in respect of M/s. Chubwa Tea Estate, vide his letter C.No. V(18)9/REF/ACD/2004/1834, dated 16.05.2005. After a thorough scrutiny of the said refund claim in the office of the Commissioner of Central Excise, Dibrugarh, the said Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh Division was informed vide letter C.No. V(14)19/Pre-Audit/DIB/2005/193, dated 27.06.2005 that the Commissioner, Central Excise, Dibrugarh has withheld the pre-audit clearance in respect of the said claim. Thereafter, the said Shri H.R. Saha, Assistant Commissioner of Central Excise, Dibrugarh again wrote to the Commissioner, vide letter C.No. V(18)9/REF/ACD/2004/2257, dated 29.06.2005, justifying the refund claim of the claimant and seeking reconsideration. In reply, vide letter C.No. V(14)19/Pre-Audit/DIB/2005/8670, dated 25.07.2005, the earlier decision of the Commissioner was reiterated. Inspite of this specific direction of the Commissioner, the said Shri H.R. Saha, Assistant Commissioner of Central Excise, Dibrugarh, instead of issuing a show cause notice to the claimant passed an order for refund of Rs. 77,52,409.00 (Rupees seventy seven lakhs fifty two thousand four hundred nine), vide Order No. 14/REF/05-06, dated 05.08.2005, in favour of M/s. Chubwa Tea Estate, P.O. Chabua, Dist. Dibrugarh, in violation of the guidelines of the Central Board of Excise & Customs, circulated under Circular No. 809/6/2005-CX, dated 01.03.2005.

*for a. 7 of 106
Date 25/7/05
Contradict's of imput
Statement of imput
as in the para
has been passed
and on 10/8/2005
order of 10/8/2005
copy of 10/8/2005
order of 10/8/2005
order of 10/8/2005
as on name*

List of documents by which the articles of charge
framed against Shri H.R. Saha,
Assistant Commissioner, Central Excise, Tinsukia
are proposed to be sustained

1. Copy of the refund claims dated 12.09.2004 & 20.09.2004, : 2 sheet addressed to the Assistant Commissioner, Central Excise, Dibrugarh by M/s. Chubwa Tea Estate
2. Copy of letter C.No. V(18)9/REF/ACD/2004/1834, : 4 sheets dated 16.05.2005 of Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh, addressed to the Joint Commissioner (Audit), Central Excise, Dibrugarh
3. Copy of letter C.No. V(14)19/Pre-Audit/DIB/2005/193, dated : 1 copy 27.06.2005 of the Superintendent (Audit), Central Excise, Dibrugarh, communicating the order of the Commissioner, under which pre-audit was withheld
4. Copy of letter C.No. V(18)9/REF/ACD/2004/2257, :
14sheets dated 29.06.2005 of Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh, addressed to the Commissioner, Central Excise, Dibrugarh
5. Copy of letter C.No. V(14)19/Pre-Audit/DIB/2005/8670, dated : 1 copy 25.07.2005 of the Joint Commissioner (Audit), Central Excise, Dibrugarh, addressed to Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh
6. Copy of the Order No. 14/REF/05-06, dated 05.08.2005, : 4 sheets passed by the Assistant Commissioner, Central Excise, Dibrugarh
7. Copy of letter C.No. II(8)22/VIG/COMMR/DIB/05/9614, dated : 1 copy 11.08.2005, under which explanation of Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh is called
8. Copy of letter C.No. I(11)1/CON/ACD/DIB/2004/2795, dated : 5 sheets 17.08.2005 of Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh, addressed to the Additional Commissioner (P&V), Central Excise, Dibrugarh
9. Copy of CBEC Circular No. 809/6/2005-CX, dated 01.03.2005 : 1 sheets [pre-audit / post audit instruction procedures]

*Attested
for
Advocate*



GOVERNMENT OF INDIA
MINISTRY OF FINANCE: DEPARTMENT OF REVENUE

OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE & SERVICE TAX:: TINSUKIA

C. No. II (9)2/CONF/ACT/06/

Dated: - 15/11/2006

To,

THE PRESIDENT OF INDIA,
NEW DELHI

(THROUGH PROPER CHANNEL)

Kind attention:-

Sri S.P.Roy, Under Secretary to the Govt. of India,
AD-V, Ministry of Finance, Department of Revenue,
Jeevandep Building, Parliament Street,
New Delhi-1.

Sub:- Memorandum No. 55/2006 under F. No.C.14011/27/2006-Ad-V/4725 dt.25/09/2006.

Most Respectfully Sheweth,

The petitioner, Sri H.R.Saha, Assistant Commissioner of Central Excise, Tinsukia under Dibrugarh Commissionerate begs to refer to the above memorandum No. 55/2006 dated 25/09/06 whereunder enquiry has been proposed under Rule 14 of the CCS (CCA) Rules, 1965.

2. Respected Sir, I beg to be apologized for requesting to grant me an extension of time vide petitioner's letter C. No. II (9) 2/CONF/ACT/06/8521 dated. 19.10.2006 (*Copy enclosed for kind ready reference*) for replying to the memorandum.

3. The petitioner begs to submit the following reply in defence in terms of Para-2 of the memorandum.

3.1 The petitioner straightway denies all the articles of charges referred in Annexure-I, II. The charges are unethical, arbitrary, vindictive and bad in law.

3.2. The instant sanction & order for refund of Rs. 77, 52, 409.00 (Rupees seventy seven Lacs fifty two thousand four hundred and nine) only was passed consequent to eligibility order passed on 10/05/05 under Notification No. 33/99-CE dt. 08/07/99 as amended, as the assessee was found eligible for the benefit of exemption enshrined in the notification. The eligibility Order No. DIV/REF/ACD/01/05-06 dated 10/5/05 had been duly endorsed to the Commissioner of Central Excise, Dibrugarh for information and necessary action vide C. No. V (18)09/REF/ACD/2004/1777-80 dated 11/05/05 (Copy enclosed for kind information). (ANNEXURE-“A”)

4. Subsequently, by virtue of the aforesaid Eligibility Order, draft sanction order of refund amount of Rs. 1, 10, 61, 418.00 (Rupees one Crore ten lacs sixty one thousand four hundred and eighteen) only was forwarded to the Commissioner of Central Excise, Dibrugarh for Pre-audit before finally

Contd.P/2..

*A. H. Saha
Advocate*

sanctioning amount of refund to the assessees vide C. No. V(18)09/REF/ACD/2004/1834 dated 16/05/05 with relevant claim file No. V(18)26/REF/ACD/2004-05 in original containing pages 2 to 520 and NSP I to III along with draft sanction Order.(copy enclosed) (ANNEXURE-“B”) with reference to which the petitioner was informed vide C. No. V (14) 19/Pre-audit/DIB/2005/193 dated 27/06/05 that the Commissioner of Central Excise, Dibrugarh was pleased to withhold pre-audit clearance of the above claim on the ground of time limit. It is stated in the said letter C. No. V (14) 19/Pre-audit/DIB/2005/193 dated 27/06/05 that the ratio of the judgment of the Supreme Court reported at 2005 (181) ELT-145 in the case of M/s. Gini Filaments is squarely applicable to this facts of this refund claim. It is also informed that the Supreme Court in the case of M/s. Gini Filaments has held that “Exemption Notification has to be read strictly so far as eligibility is concerned”.

4.1 Petitioner in reply to this above said letter wrote back to the Commissioner of Central Excise, Dibrugarh explaining that the instant case of refund claim is not barred by limitation and also the case laws referred to above is also not applicable and relevant inasmuch as the eligibility order has since been issued on 10/05/05 making the assessee eligible to lodge their claim. (Copy of letter C. No V(18)09/REF/ACD/2004/2257 dt. 29/06/05 is enclosed for ready reference).(ANNEXURE-“C”) It is also informed to the Commissioner that the office of the petitioner is receiving regular reminder from the assessee for clearing their refund otherwise interest has to be paid. **One of such reminders of the assessee dated 28.06.2005 is enclosed herewith for kind perusal. (ANNEXURE-“D”)**

4.2.On receipt of the letter from the petitioner, the Joint Commissioner of Central Excise, Dibrugarh of Commissionerate office, Central Excise, Dibrugarh vide his letter C. No. V (14)19/Pre-Audit/DIB/2005/8670 dated 25/07/05 in the last but concluding para observed thus: “You are required to pass an order on merits, keeping in view of aforesaid position of Law. Please ensure that the principle of Natural Justice is not violated” (Copy enclosed).(ANNEXURE-“E”) In the same letter in para 2, it is said thus: “In the case of M/s. Shivdham Industries reported at 2002 (141) ELT/272, the Tribunal, while observing that an exemption under the Notification No 33/99-CE dt.08/07/1999 is not automatically defeated if the refund is not filed within the period of 7 (seven) days, also observed that the claim of refund in any case has been filed within the period prescribed under Section 11B”.

5. In the said letter of the Joint Commissioner dated 25.07.2005, the petitioner has been directed to pass an order on merit. In this context, the petitioner begs to submit that the unit was rendered eligible for the benefit under notification No.33/99 vide eligibility order dated 10.05.2005 & the only alternative which was left before the petitioner is to sanction refund in the wake of passing the eligibility order. All the facts were made known by the petitioner to the Commissioner, but the Commissioner without resorting to the provisions of Section 35E of CEA 1944 returned the file to the petitioner. Therefore, the petitioner begs to submit that the refund has been sanctioned after adjudging the limitation aspect. It is a settled law that there is nothing in the notification to suggest that filing of claim not in time does not bar the claimant to get substantive benefit. In this connection, the judgment of the Hon’ble Tribunal in the case of Vinay Cement Ltd. reported in 2002(147) ELT 724 (Tri.-Kolkata) may kindly be perused (Copy enclosed).(ANNEXURE-“F”)

6. The petitioner further begs to submit that the eligibility order passed by the petitioner, after observing the principles of natural justice has not been challenged and therefore, it has been presumed that the refund is not hit by bar of limitation. Also the petitioner was not directed by the Commissioner to file appeal as per the provisions of Section 35E of CEA 1944 though all facts were brought to the knowledge of the Commissioner of Central Excise, Dibrugarh as are evident from the correspondences received from the Commissionerate Office, Dibrugarh. Further, the petitioner begs to submit that in order to avoid payment of interest to the assessee in the event the assessee approach High Court, the petitioner settled the refund claim as the High Court has jurisdiction to award interest even though the refund does not fall under the purview of Section 11B of CEA 1944. The petitioner begs to state that the refund was released after obtaining proper undertaking from the assessee. (ANNEXURE-“G”)

7.That Sir, from the above submission it is in evidence that the petitioner being a Quasi-judicial authority has acted in good faith and made required correspondences to the Commissioner of Central Excise, Dibrugarh for obtaining time to time direction/order. And that nowhere the petitioner has shown any slightest negligence, disobedience and dereliction of duty in the discharge of his

-6-

responsibilities. The Communication/correspondences would sufficiently exhibit that there is complete transparency in his function. That Sir, the article of charges in Annexure- I, II & documents that are relied upon are baseless and not factual forming a decision that the petitioner acted in a manner which is unbecoming of a Government Servant which is a clear indication and manifestation of a preconceived notion of vindictive and biased attitude to spoil the career of a subordinate officer i.e. your humble petitioner.

8. The petitioner begs to enclose a copy of Notification No. 33/99-CE dated 08/07/99 as amended which would show that there is no bar of sanction of any amount exceeding Rs. 5 (five) Lacs by officer of the level of the petitioner. In other hands, the Notification authorizes to sanction any amount of Refund Claim found eligible. (ANNEXURE-“H”)

9. The petitioner also begs to refer to a case law in the matter of CCE, Dibrugarh. Vs. M/s. Napuk T.E. & M/s. Mutrapore T. E. wherein the Hon’ble CESTAT, Eastern Zone, Kolkata vide Order No. A-593/KOL/2006 dated 04/07/06 observed that the Assistant Commissioner cannot deny the applicants of their due claims and rejected the grounds of revenue. The Commissioner, Central Excise, Dibrugarh also accepted the said CESTAT’s order with a direction to the petitioner to dispose similar cases as per the decision of the Hon’ble Tribunal (Copy enclosed CESTAT order dated 04/07/06 & Commissioner letter dated 22/09/06 for ready reference). (ANNEXURE-“I” & “J”) It is pertinent to submit at this juncture that the Joint Commissioner of Central Excise, Dibrugarh vide his letter dated 25.07.2005 (*supra*) has projected the similar grounds to be considered at the time of passing order and the petitioner after careful examination of position of law and on the basis of the eligibility order passed refund sanction order (as aforesaid) and also without receiving any communication from the Commissioner of Central Excise, Dibrugarh about whether or not Review Application was being filed as per Section 35E of CEA 1944.

10. Under the aforesaid circumstances, the petitioner sanctioned the refund after observing necessary audit formalities and after examining the position of law as the assessee cannot be denied of their due claims

11. The petitioner begs to submit that there are nothing on record that the petitioner acted as unbecoming of a Government Servant rather the petitioner acted in bona fide maintaining absolute integrity and devotion to duties by making all facts known to the Commissioner of Central Excise, Dibrugarh & the Commissioner of Central Excise, Dibrugarh has not given the true & proper guideline as per the provisions of law where there are provisions in law for review of an order passed by the officer sub-ordinate to the Commissioner.

12. The petitioner also begs to request that he may be afforded the opportunity to be heard in person and an independent enquiry instituted.

PRAYER

Under the circumstances, the petitioner, most humbly pray that the charges brought against him being baseless, frivolous are liable to be dropped.

Enclo: 26 Sheets.

I beg to remain Sir,
Yours faithfully,

(H.R.SAHA)
ASSISTANT COMMISSIONER
CENTRAL EXCISE & SERVICE TAX
TINSUKIA

Speed Post.

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Advance Copy forwarded to Sri S.P.Roy, Under Secretary to the Govt. of India,
C.E.B.C, Ministry of Finance, Department of Revenue, Govt. of India, Jeevan deep
Building, Parliament Street, New Delhi-110 001.

(H.R.SAHA)
ASSISTANT COMMISSIONER.

11 JUN 2007

গুৱাহাটী পৰিষদ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

Filed by the respondents
through Goutam Kishore Sircar

13.06.07

D.A. NO.72 OF 2007

Sri H. R. Saha

...Applicant

-Versus-

Union of India & Ors.

...Respondents

The written statement filed on behalf of the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

That with regard to the statement made in paragraph 1 of the instant application the Respondents begs to state that the allegation that the applicant was transferred from Tinsukia Central Exercise Division to Shillong Central Exercise Commissionerate with a maleficent intention, colourable exercise of power and in violation of the transfer policy is denied in lock, stock and barrel. In fact, the applicant was transferred on administrative ground as vigilance proceedings were initiated against Shri Himangshu Ranjan Saha. He was already issued with two charge-sheets.

Contd...P/-

a. That with regard to the statement made in paragraph 2 of the instant application the Respondents have no comment.

b. That with regard to the statement made in paragraph 3 of the instant application the Respondents have no comment.

c. That with regard to the statement made in paragraph 4.1 and 4.2 of the instant application the Respondents have no comment.

d. That with regard to the statement made in paragraph 4.3 of the instant application the Respondents beg to state that the Officer's option of five choice places were in response to the Central Board of Excise & Customs (CBEC)'s circular issued every year before the Annual General Transfer. The options were sent to the Board and it was for the Board to consider his option if he is to be transferred in the Annual General Transfer (AGT). As the applicant's case was not considered for transfer in the AGT, 2005, the choice of posting given by him in the year 2005 has no relevance now. He has not given any option as called in this current year, 2007.

e. That with regard to the statement made in paragraph 4.4 of the instant application the Respondents

beg to state that the Chief Commissioner is empowered to transfer a Group "A" Officer of his Zone. The transfer policy, as referred to by the applicant in this petition, is basically designed for AGT, to be made by the CGEC under the Ministry of Finance, Department of Revenue. Internal posting of an officer within a Zone is done by the Chief Commissioner only. An Officer can not claim a posting to a specific place as a matter of right, on the ground that the post at a specific place to run the administration/revenue machinery smoothly in his Zone. In this case, transfer order No.27/2007, dated 09.03.2007 was issued by the Chief Commissioner, transferring Shri H.R. Saha from Central Excise, Tinsukia Division, falling under Dibrugarh Central Excise Commissionerate to Shillong Central Excise Commissionerate, Specific posting of Shri Saha will be done by the Commissioner, Central Excise, Shillong, as Shri Saha has been put under the disposal of the Commissioner, Central Excise, Shillong, under the said transfer order.

A copy of the said transfer order dtd. 9.3.2007 is annexed herewith as Annexure -A.

7. That with regard to the statement made in paragraph 4.5 of the instant application the Respondents beg to state that the applicant is staying alone in Tinsukia. He stays at office guest house in the office premises only. His family, including his wife stays at

W.H.

Kolkata. A number of medical certificates for illness of his wife have been issued from Kolkata and the same are on record. In this connection, a medical certificate dtd. 23.7.06, in favour of Mrs. Bharati Saha, wife of Shri Himangshu Ranjan Saha, issued by Dr. A.K. Khan of Kolkata.

A copy of the medical certificate dtd. 23.7.06 is annexed herewith as Annexure-B.

8. That with regard to the statement made in paragraph 4.6 of the instant application the Respondents beg to state that the representations referred to in this para are dated 3.3.2003, 25.9.2003 and 8.11.2004. At this point of time, these representations have no relevance, as the applicant has shifted his residence from Silchar to Kolkata, which was reported by him vide his letter C. No. II(29)04/PL/ET/ACT/2005/2005/Pt. II/8408 dated 9.10.2006, addressed to the Commissioner, Central Excise & Service Tax Commissionerate, Dibrugarh. The applicant can not have the grievance now that his representations given four years ago were not considered by the Chief Commissioner at that time.

A photo copy of the said letter dtd. 9.10.06 is annexed herewith as Annexure - C.

9. That with regard to the statement made in paragraph 4.7 of the instant application the Respondents

beg to state that the transfer policy referred to in this para was laid down for effecting AGT of Group "A" Officers by the CBEC. The option given in 2005 was not considered for AGT of 2005, cannot be a cause of discontent now, when he was transferred by the Chief Commissioner within the Zone in the month of March, 2007. The CBEC can accommodate an officer only when he gives an option for his transfer in AGT in that year. Shri Himangshu Ranjan Saha has not given his option for the year 2007 for the AGT. This option has to be given on yearly basis, it can not be one time, as the impression is being given by the applicant in this petition.

10. That with regard to the statement made in paragraph 4.8 of the instant application the Respondents beg to state that the decision whether an administrative exigency exists at a particular point of time to transfer an officer from one place to another, has to be decided by the head of the administrative set up i.e. by the Chief Commissioner of Shillong Zone in this case. It is not obligatory on the part of the head of the administrative set up to give the reasons for such decision. As there is no malafide in the subject transfer, the applicant's prayer to produce relevant records is not bonafide. The Chief Commissioner is not duty bound to show the records of the transfer to the applicant.

11. That with regard to the statement made in paragraph 4.9 of the instant application the Respondents beg to state that the applicant opted for posting at his choice station in 2005. The CBEC did not transfer him in the AGT, 2005. The Chief Commissioner transferred him to Shillong on 01.08.2005, vide order dated 5.8.2005, in O.A. No. 206/2005, stayed the transfer on the ground of his wife's illness. Now in the year of 2007, he cannot take the plea of stay of his transfer order on the same ground. This ground is also not correct as he stays in Tinsukia alone and his family, including his wife, stays in Kolkata. He cannot take the plea that once his order was stayed by the Hon'ble CAT in August, 2005, he can not be transferred in March, 2007 on the strength of the same order of the Hon'ble CAT.

12. That with regard to the statement made in paragraph 4.10 of the instant application the Respondents beg to state that it is not correct to say that Tinsukia is a non sensitive posting. The transfer policy, 2005 as enclosed by the applicant with this petition clearly shows that posting of a Division in Central Excise Commissionerate is a sensitive posting (refer to the transfer policy marked as Annexure-1 by the petitioner, Specifically Page No.31, under Annexure-V (categorisation of posts into sensitive and non sensitive)). The Chief Commissioner has examined the relevant facts

relevant facts relating to Shri Himangshu Ranjan Saha, and only thereafter, he is transferred from Tinsukia Division to Shillong Central Excise Commissionerate. There is no ulterior motive or malafide intention in this transfer order.

13. That with regard to the statement made in paragraph 4.11 & 4.12 of the instant application the Respondents beg to state that this specific case in respect of M/s Chubwa T.E. has nothing to do with this transfer order. However, the applicant has been issued a charge sheet by the Ministry of Finance for insubordination and not following the specific order of his higher authorities. Insubordination and intentional disobeying the instructions can not be justified by taking the plea of giving natural justice. The language used by the applicant that the Respondent No.4 acted with a hostile discrimination for the reasons best known to her, is a remark showing the attitude of the applicant towards his higher officers. The case referred to in these paras has no relation to his transfer order.

14. That with regard to the statement made in paragraph 4.13 of the instant application the Respondents beg to state that the case referred to therein has nothing to do with in this transfer order. The Respondent No.3, i.e. the Chief Commissioner has not been influenced and can not be influenced by the Commission-

ner, Central Excise, Dibrugarh, i.e. Respondent No.4. The Chief Commissioner makes his own decision based on the information/documents of his own office.

15. That with regard to the statement made in paragraph 4.14 of the instant application the Respondents beg to state that Shri Himangshu Ranjan Baha has been issued two charge sheets bearing Memo No. 55/2006 dated 29.9.06 and Memo No. 62/2006, dated 24.11.2006 by the Under Secretary to the Govt. of India, Ministry of Finance Department of Revenue, New Delhi in respect of M/s. Chubwa T.E. and M/s Green Assam Company Pvt.Ltd. respectively. This para has referred to only one charge sheet bearing Memo No. 55/2006 dated 29.9.2006 in respect of M/s. Chubwa T.E. The applicant has intentionally and knowingly suppressed the fact before the Hon'ble CAT that another charge sheet bearing Memo No.62/2006 dated 24.11.2006, in respect of M/s Green Assam Company Pvt. Ltd. has been issued to the tune of Rs.11,13,901/- caused by him. There are instructions from the Central Vigilance Commissioner (CVC) that an officer cannot be posted at a sensitive post when a vigilance action is initiated against an officer. Para 9 of the transfer policy, as enclosed by the petitioner also speaks of transfer on administrative ground in public interest as per the CVC guidelines. The impugned transfer order is not punitive in nature and is not issued with any malafide intention.

A copy of the CVC Circular bearing No. 3(v)/9916 dtd. 18.8.2006 is annexed herewith as Annexure - D.

16. That with regard to the statement made in paragraph 4.15 of the instant application the Respondents beg to state that there is no malafide intention in issuing this transfer order. This order was issued by the Chief Commissioner, i.e. Respondent No.3 considering all the relevant facts, information and documents available in his office. The transfer order was issued in the interest of the administrative discipline, with a view to safeguard government revenue. To post the applicant at the place of his choice station is within the ambit of the CBEC, subject to the condition that he makes an option giving such choices. He has not given any option of his choices for the AGT, 2007. He cannot claim a right to a specific posting or a station if he does not get this choice posting.

17. That with regard to the statement made in paragraph 4.16 of the instant application the Respondents beg to state that the Hon'ble CAT is being requested to dismiss the petition with the direction to the applicant to join his new place of posting as per the transfer order.

18. That with regard to the statement made in paragraph 5.1 of the instant application the Respondents beg to state that the specific case mentioned in this para has nothing to do with his transfer order. It is also not a fact that the Respondent No.3 i.e. the Chief Commissioner has issued the order at the instance of the Respondent No.4, i.e. the Commissioner, Central Excise, Dibrugarh. In fact the transfer order was issued on administrative ground, in consonance with the CVC guidelines in public interest to safeguard government revenue.

19. That with regard to the statement made in paragraph 5.2 of the instant application the Respondents beg to state that the transfer order has nothing to do with the case, as referred to by the applicant. However for the clarify, it may be stated the Commissioner (Appeals), Guwahati's order referred to in his para has already been appealed against before the CESTAT, Kolkata and the matter is pending decision before the Tribunal.

20. That with regard to the statement made in paragraph 5.3 of the instant application the Respondents beg to state that the transfer order is not arbitrary, illegal, unfair, as the same was issued by the Chief Commissioner, after taking into consideration all information, documents of his office. It has nothing to do with the case, as referred to by the applicant.

21. That with regard to the statement made in paragraph 5.4 of the instant application the Respondents beg to state that the charge sheet as referred to in this para was issued to the applicant for insubordination and intentionally disobeying the instructions of the higher authority.

22. That with regard to the statement made in paragraph 5.5 & 5.6 of the instant application the Respondents beg to state that the transfer order was issued on administrative ground, following the guidelines of the CVC.

23. That with regard to the statement made in paragraph 5.7 of the instant application the Respondents beg to state that this statement is not correct as his wife does not stay with him at Tinsukia as he has already shifted his family including his wife to Kolkata.

24. That with regard to the statement made in paragraph 5.8 of the instant application the Respondents beg to state that the applicant did not submit any option for the AGT, 2007. The options submitted by the applicant in the years 2003 and 2005 has no relevance now, as option has to be given on yearly basis. The respondents further beg to state that the grounds raised by the applicant are not good grounds and also not

tenable in the eye of law and therefore the instant application is liable to be dismissed.

25. That with regard to the statement made in paragraph 6,7,& 8 of the instant application the Respondents beg to no comment.

26. That with regard to the statement made in paragraph 9 of the instant application the Respondents beg to state that the claim petition of the applicant is illegal and ill founded and as such the applicant is not entitled to get any interim relief.'

27. That the respondents submit that the discussion of above noted facts and circumstances the instant application has no merit and as such is liable to be dismissed.

— 13 —

VERIFICATION

I, Kehozhol Akhi Khriya, S/o Late Kehozhol Khriya
aged about 43 years, R/o Bhangarh, Guwahati
District Kamrup, and competent officer of the
answering respondents, do hereby verify that the state-
ment made in paras 1 to 5, 9 to 14, 16, 17 are true to
my knowledge and those made in paras 6, 7, 8, 15
being matters of record are true to my information
derived therefrom which I believe to be true and the
rests are my humble submission before this Hon'ble
Tribunal.

And I sign this verification on this 14th day
of May 2007 at Guwahati.

Kehozhol Akhi Khriya
Signature

ANNEXURE - A



OFFICE OF THE CHIEF COMMISSIONER CENTRAL EXCISE & CUSTOMS Dibrugarh SHILLONG ZONE NORTH EASTERN REGION

MAX SPEED POST

3rd Floor, Crescens Building, MG Road, Shillong - 793001,
Phone: 0364-2500181. Fax: 0364-2224747.

E-mail: ccshillong@excise.nic.in EDECS :- (zone18)

ORDER

DOPM/AC-DC/53/2007

Dated : 9th March 2007

ORDER NO. 27/2007

Dated : 9th March 2007

The following transfer and Posting Order in the Grade of Deputy Commissioner/Assistant Commissioner under Shillong Zone is issued with immediate effect:

Sl. No.	Name of the Officer	Designation	From	To
1.	Shri H.R. Saha	Assistant Commissioner	Central Excise, Tinsukia Division	Shillong Central Excise Commissionerate

This issues with the approval of the Chief Commissioner, Customs & Central Excise, Shillong.

Sd/-
(ABHILASHA MAHAPATRA)
DEPUTY COMMISSIONER

C. No. 11(G)6/CCO/SH/2006/

Dated : - 9th March 2007

Copy forwarded for information and necessary action to:

1. The Member (P & V), CBEC, North Block, New Delhi - 110 001
2. The Member (CX), CBEC, North Block, New Delhi - 110 001
3. The Member (Customs), CBEC, North Block, New Delhi - 110 001
4. The Member (L & J), CBEC, North Block, New Delhi - 110 001
5. The Joint Secretary (Admn), CBEC, North Block, New Delhi - 110 001
6. The Commissioner (DOPM), Customs & Central Excise, 412-A, Deep Shikha Building, Rajendra Place, New Delhi - 110 008, with reference to his office letter F.No.8/1-DB/OPM/2007 dated 09-03-2007.
7. The Commissioner of Customs (Prev), N.E.R., Shillong.
8. The Commissioner of Central Excise, Dibrugarh.
9. The Commissioner of Central Excise, Shillong.
10. The Commissioner (Appeals), Central Excise & Customs, Guwahati
11. The Chief Account Officer, Central Excise, Shillong /Dibrugarh & Customs (P), Shillong.
12. The Pay and Accounts Officer, Customs & Central Excise, Shillong
13. Shri H.R. Saha, Assistant Commissioner, Tinsukia Division for compliance.

Handed over
G. S. S.

[Signature]

ANNEXURE - B

-15-

19

Arake Kumar Khan

M.B.B.S. (Cal) F.I.A.G.P.

Senior House Physician & E.M.O. Calcutta
National Medical College & Chittaranjan Hospital

PANEL DOCTOR

INDIAN AIRLINES
NATIONAL AIRPORT AUTHORITY
INTERNATIONAL AIRPORT AUTHORITY
BUREAU OF INDIAN STANDARDS

ATTACHED TO

Bliss Nursing Home
Ramkrishna Medical Complex
Swasti Nursing Home
Dafodil Nursing Home
U.M.R.I.
New Life Nursing Home
V.I.P. Apex

PHONE 2570-4299
MOBILE 9830314033

10 a.m. to 4 p.m.
7:30 p.m. to 11 p.m.

Saturday Evening Closed

91

To whom it may concern

This is to certify that Mrs. Bharati Saha
W/O MR H.R. Saha of K+ Prabuddha Lane,
Krishnapur, Cal- 101 has been suffering
from viral fever & AGE av and from
15/07/06. She is under my treatment
& advised complete Bed Rest upto
20/07/06. She is fit & may join her usual
activity from 24/07/06.

Azad Khan.

v Bharati Saha
nigatajali

Azad Khan

Dr. A. K. Khan
MBBS. (Cal) Ex. B. H. D. P. M.
Cal. National Medical College
Chittaranjan Hospital

Rs 1000/-

23/07/06

Dr. A. K. Khan,
...JS. (Cal) Ex. B. H. D. P. M.
Cal. National Medical College
Chittaranjan Hospital

[B.C.G., MMR, POLIO, TRIPLE ANTIGEN, HEPATITIS-B VACCINE & E.C.G. DONE HERE]

Arake
Kumar
Khan

ANNEX - C

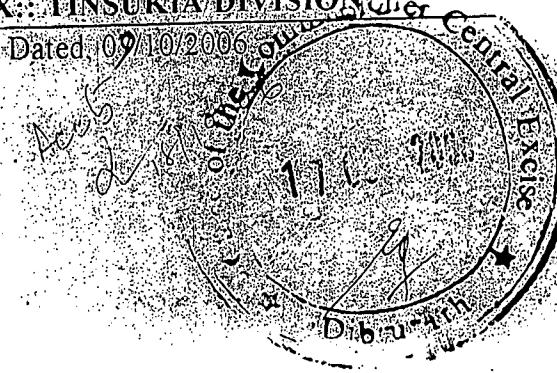
OFFICE OF THE ASSISTANT COMMISSIONER,
CENTRAL EXCISE & SERVICE TAX, TINSUKIA DIVISION

-16-

C.No II(29)04/PL/ET/ACT/05/Pt-II/ 8608

Dated, 09/10/2006

To
The Commissioner,
Central Excise & Service Tax Commissionate,
Dibrugarh.



Sub:- Change of Home Town from SILCHAR to KOLKATA - information reg.

Madam,

I am to inform you that, I have purchased one flat in KOLKATA with permission from the Commissioner, Central Excise, Shillong during 2003. As such, I want to change my Home Town to Kolkata (WEST BENGAL) from the existing place of SILCHAR (ASSAM).

This is for favour of your information & necessary action.

Yours faithfully
(H.R.SAHA)
ASSISTANT COMMISSIONER

attested
6pm 10/10/06

1. Copy of the documents with respect to the above, with regard to
2. Sir H.R. Saha Assistant Commissioner, Tinsukia Division for compliance.

(ABHILASH MAHAPATRA)

ANNEX - D

CONFIDENTIAL

93

NO. 3(v)/99 (6)

CENTRAL VIGILANCE COMMISSION

Satarkta Bhawan, Block 'A'
CPO Complex, I.N.A.
New Delhi-110 023
Dated the 18th August, 1999

Subject:- Measures for strengthening vigilance and anti-corruption work - Agreed list of suspected officers and list of public servants of gazetted status of doubtful integrity.

in order to keep a watch on the activities of public servants who are of doubtful integrity, the Ministries/Departments/Organisations are required to maintain two lists viz. (i) "Agreed list" and (ii) list of public servants of gazetted status of doubtful integrity. The "Agreed list" of suspected officers has its origin in the "Programme of vigilance and anti-corruption work during 1966", whereas the list of public servants of gazetted status of doubtful integrity was prescribed in 1969.

The criteria for making such lists has been provided in the Ministry of Home Affairs Letter No. 130/1/66-AVD dated 5/5/66 and letter No. 105/1/66-AVD dated 28/10/69. It has been provided in these instructions that the "Agreed list" so prepared will remain in force for one year from the date of preparation and officials work/activities/behaviour during the period would be watched and the list would be reviewed after this period. The list of officers of doubtful integrity will remain in force for a period of three years.

Notwithstanding the extant instructions available to the different organisations, do not strictly adhere to the prescribed duration and fails to prepare/continue such lists together. The Commission also observes that many departments/organisations are either not maintaining such lists or are not reviewing them periodically. Further, officers of doubtful integrity are sometimes placed in sensitive positions. Adequate precautions should be taken to ensure that the lists are correctly and objectively prepared and reviewed from time to time.

Considering the sensitivity of such lists, the Commission, in exercise of powers conferred in Para 3(v) of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training Resolution No. 37/1/20/99-AVD-III dated 4/1/99, directs all departments/organisations under its purview, not to post such officers who are placed on the aforesaid lists in sensitive positions. CBI would co-ordinate with the

attested copy



Ministries/Organisations so that the lists so prepared are periodically reviewed. Director/CBI and the CVOs of the Departments will keep the Commission posted about developments from time to time.

5. The CVOs of all Ministries/Departments/Organisations shall ensure strict compliance of these instructions and inform the Commission every year of the action taken by them in this regard while sending their self-assessment/ performance report as instructed earlier by the Commission vide No. 98/VGL/33 dated 18.11.98.

K
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**(N. VITAL)
CENTRAL VIGILANCE COMMISSIONER**

The Secretaries of All Ministries/Departments of Government of India

The Chief Secretaries of All Union Territories

The Chief Executives of all PSUs/Banks/Financial Institutions

The Comptroller & Auditor General of India

The Chairman, Union Public Service Commission

Director CBI, CGO Complex, New Delhi

All Chief Vigilance Officers in the Ministries/Departments/PSEs/Public Sector

Vigilance Companies/Autonomous Organisations/Societies

President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO