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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. 73/2007.....

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SECTION OFFICER (Judl.)

25/09/17

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUJARATI BENCH:

WADAN S. S. S.

1. Original Application No. 73/07
2. Miscellaneous Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(s) Mrs. L.R. Mitharam VS Union of India & Ors

Advocate for the Applicant(s) In Person

Advocate for the Respondent(s) C. R. S. M. de Ahmed

Notes of the Registry	Date	Order of the Tribunal
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This application is in form  
is filed in

N. Rajyadank 282357  
Dt. 13.3.07

Dy. Registrar

*[Signature]*

13.3.07

Petitioner's copy with  
envelopes for issues  
orders are received.

*[Signature]*

20.3.2007

Present: The Hon'ble Mr. K.V. Sachidan.  
Vice Chairman.

The claim of the Applicant  
While she was holding the post of  
Commissioner, Central Excise, [illegible]  
disciplinary proceeding [illegible]  
against her and charge sheet containing  
three charges was issued to her. Enquiry  
Officer in his report held that all the three  
charges leveled against her were not  
proved. But the Respondent disagreed  
with the report of the Enquiry Officer  
referred the matter to the CVC who  
advised imposition of penalty  
withholding of 25% of the basic  
pension. Accordingly, [illegible]  
dated 31.3.2006 the Respondent has  
proposed to impose [illegible]  
in monthly pension [illegible]

6

Contd.  
29.3.2007

Notice & order sent  
to D/Section for  
issuing to respondent  
regd. A/D post.

D/No- 270

30/3/07 Dt= 5/4/07

D Service report  
awaited.

15.5.07

intrama  
billed for  
applicant.

No wk billed.

26.6.07

27.6.2007

compliance  
was not all.  
27.7.07

to the Applicant on her for a period of ten years and to release the gratuity admissible to her which is challenged in this O.A. Since the order has been passed by the President of India no appeal lies. Hence, this O.A. for setting aside of the penalty order and restoration of other benefits in full.

Heard the Applicant - Mrs. L. R. Mithran, in person. Mr. M. U. Ahmed, learned Addl. C.G.S.C. appearing for the respondents submitted that he may be granted time to obtain instruction in the matter. Let the instruction be taken.

Issue notice to the Respondent. Post the matter after six weeks. Post on 14.5.2007.

Vice-Chairman

15.5.07.

Counsel for the respondents wanted time to file written statement. Let it be done. post the matter on 27.6.07.

Vice-Chairman

1m

27.6.2007

Mr. M. U. Ahmed, learned Addl. C.G.S.C. is granted, on request, further four weeks time to file reply statement.

Post on 30.7.2007.

Vice-Chairman

/bb/

30.7.07.

I have heard learned counsel for the parties.

Considering the issue involve, I am of the view that the application has to be admitted. Application is admitted. Issue notice on the respondents. Post the matter on 29.8.07

Vice-Chairman

lm

29.8.07

Further four weeks time is allowed to the respondents to file written statement.

Post on 4.10.07 for order.

Vice-Chairman

Pg

R. S. Choudhury, learned counsel appearing for the applicant is present and Mr. M. U. Ahmed learned Standing Counsel for the Central Government is absent. No reply has yet been filed. It being <sup>a case of</sup> Departmental Proceedings, Respondents should cause production of the Departmental Proceedings file for perusal.

Call this matter on 15.11.07.

Send copies of the order to the Respondents; who should produce the Departmental Proceedings file; Call this matter on 15.11.07.

(Khushiram)  
Member(A)

(Manoranjan Mahanty)  
Vice-Chairman

Lm

dt. 1.10.07.

Pl. send copies of the order to respondents.

order dt. 11/10/07

issuing to both the parties.

11/10/07

W/s not filed.

22/16.11.07.

W/s not  
filed.

22/4.1.08.

19.11.2007

Mrs.R.S.Choudhury, learned  
for the Applicant and Mr. [redacted],  
learned Addl. Standing counsel for the  
Union of India are present.

Call this matter on 07.01.2008 on the  
prayer of Mr.M.U.Ahmed to file written  
statement.

(Khushiram)  
Member (A)

(M.R.Mohanty)  
Vice-Chairman

/bb/

07.01.2008

Mr.M.U.Ahmed, learned Addl. Standing  
counsel for the Union of India undertakes to file  
written statement in course of the day.

Mrs.R.S.Choudhury, learned counsel  
appearing for the Applicant undertakes to fi.  
rejoinder by 01.02.2008.

M.P.No.1/2008 has been filed by the  
Applicant to implead Union Public Service  
Commission, Dholpur House, Shahjahan Road,  
New Delhi - 110 001 as party Respondent No.2  
in this case. A copy of this M.P. No.1/2008 has  
already been served on Mr.M.U.Ahmed,  
learned Addl. Standing counsel on 02.01.2008.

Heard Mrs.R.S.Choudhury, learned  
counsel appearing for the Applicant and  
Mr.M.U.Ahmed, learned Addl. Standing counsel  
for the Union of India who has got no objection  
to implead Union Public Service Commission as  
party Respondent No.2 in this case.

On the face of his concession, this M.P.  
No.1/2008 is allowed and Union Public Service  
Commission is permitted to be impleaded as  
party Respondent No.2.

Contd...

O.A.73/2007

Contd.  
07.01.2008

Issue notice to the newly added Respondent, at the cost of the Applicant, requiring them to file reply, if any, by 07.02.2008.

Mrs.R.S.Choudhury undertakes to file an extra copy of this Original Application and an envelope and required postages/cost of the postage for issuance of notice to the newly added Respondents by tomorrow.

Call this matter on 07.02.2008.

(Khushiram)  
Member (A)

(M.R.A)  
Vice-Cl

/bb/

07.02.2008

Call this matter on 12.03.2008

(Khushiram)  
Member(A)

(M.R.A)  
Vice-C.

Lin

12.03.2008 No written statement has been filed as yet in this case by the newly added Respondents /U.P.S.C.- Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents is to obtain instructions from the U.P.S.C in the matter by the next date.

Counter has been filed. No rejoinder has been filed as yet in this case by the Applicant.

Call this matter on 21.03.2008, awaiting rejoinder from the Applicant.

Dt. 2.1.08

Pl. issue notices to R-2.

Steps and cost taken on 11/08/07

11/11/08. Notice and order sent to D/Section for issuing to newly added resp. no-2 with the cost of applicant.

11/01/08. D/No-171  
Dt- 11/11/08.

15.1.08

W/S submitted by the Respondents. Copy signed.

W/S

W/S liked.

W/S  
6.2.08.

Service report awaited from the newly impleaded Respondent no. 2.

W/S liked.

W/S  
11.3.08.

Rejoinder not liked.

No H/S from 12.03.08

QA 73/07

21.04.2008 None appears for the Applicant nor the Applicant is present. No rejoinder has yet been filed by the Applicant. Written statement was filed by the Respondents No.1. No written statement has been filed by the newly added Respondent No.2/UPSC.

Call this matter on 27.05.2008, awaiting written statement /counter from the newly added Respondent No.2/UPSC. Rejoinder, if any, be also filed by the Applicant on that date.

Send copies of this order to the newly added Respondents No.2/UPSC in the address given in the O.A.

(M.R.Mohanty)  
Vice-Chairman

dt. 21/04/08

lm

to D.I. Section

newly 05.2008  
post.

49

Mrs. M.Khound learned counsel appearing for the Applicant and Mr.M.U.Ahmed, learned Addl.Standing counsel appearing for the Respondents are present. In this case written statement and rejoinder have already been filed.

U.P.S.C. (newly added Respondent No.2) has chosen not to file written statement in this case.

In the aforesaid premises, call this matter for hearing on 28<sup>th</sup> July, 2008 for hearing.

Send copies of this order to the Applicant and to the Respondents in the address given in the O.A.

Khushiram)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

W/s and rejoinder filed by the parties.

26.5.08

26.5.08

No W/s filed on behalf of R.2.

27.5.08

Send copies of this order to the Applicant and to the Respondents.

27.5.08

order dt. 27/5/08 send to D.I. Section for issuing to Applicant and to the Respondents by post.

28.07.2008 Mr.K.Borthakur, learned counsel appearing for the Applicant is present. Mr.M.U.Ahmed, learned Addl. Standing counsel seeks an adjournment to file written statement on behalf of UPSC.

Call this matter on 04.09.2008 for hearing.

(Khushiram)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

The case is ready for hearing.

3.09.08.

lm

04.09.2008 Mr.M.U.Ahmed, learned Addl.Standing counsel appearing for the Union of India is for accommodation. Mrs. M. Khound, learned counsel appearing for the Applicant seeks adjournment of hearing of this case.

Call this matter on 30.10.2008 for hearing.

(Khushiram)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

lm

30. 10.2008 Mrs. M. Khound, learned counsel Applicant is present. Mr.M.U.Ahmed Addl.Standing Counsel appearing Union of India is absent.

Call this matter on 20.11.2008 for hearing.

(S.N.Sukla)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

lm

The case is ready for hearing.

19.11.08

20.11.2008 On the prayer of learned counsel appearing for both the parties, call this matter on 05.01.2009.

(S.N.Shukla)  
Member(A)

((M.R.Mohanty)  
Vice-Chairman

24.11.08  
W/S submitted  
by Respondent No.2  
(UPSC) Copy received.

lm

05.01.2009 Mrs M. Khound, learned Counsel appearing for the Applicant, is present. Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, is also present.

Call this matter on 06.02.2009 for hearing.

(M.R. Mohanty)  
Vice-Chairman

nkm

06.02.2009 Call this matter on 24.03.2009 for hearing.

(M.R. Mohanty)  
Vice-Chairman

nkm

the case is ready  
for hearing.

30  
2.1.09.

the case is ready  
for hearing.

3  
5.2.09

for the  
learned  
for the

(M.R.Mohanty)  
Vice-Chairman

24.03.2009

Court work suspended due to sad demise of Hon'ble Justice Guman Mal Lodha (former Chief Justice of Gauhati High Court) and, accordingly, call this matter on 06.05.2009 for hearing.

By Order

*lm*  
Court Officer

*The case is ready for hearing.*

*05.5.09*

/pb/

11.06.2009

~~Call this matter on~~

~~07.08.1009.~~

06.05.2009

Call this matter on 10.06.2009 for

hearing.

(M.R.Mohanty)  
Vice-Chairman  
(M.R.Mohanty)  
Vice-Chairman

lm

lm

*The case is ready for hearing.*

*06.8.09.*

11.06.2009

~~Call this matter on~~

~~07.08.1009.~~

(M.R.Mohanty)  
Vice-Chairman

lm

*The case is ready for hearing.*

*14.9.09*

07.08.2009

Call this matter for hearing on

15.09.2009.

(M.K.Chaturvedi)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

/lm/

CA 73/07

15.09.2009

Call this Division Bench matter on

17.11.2009 for hearing.

(M.K. Chaturvedi)  
Member (A)

/bb/

17.11.2009

On the request of Mr. R.S. Choudhury,  
learned counsel for applicant case is  
adjourned to 08.12.2009

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/pb/

The case is ready  
for hearing

08.12.2009

List before the Division Bench on

4.1.2010.

(Mukesh Kr. Gupta)  
Member (J)

pg

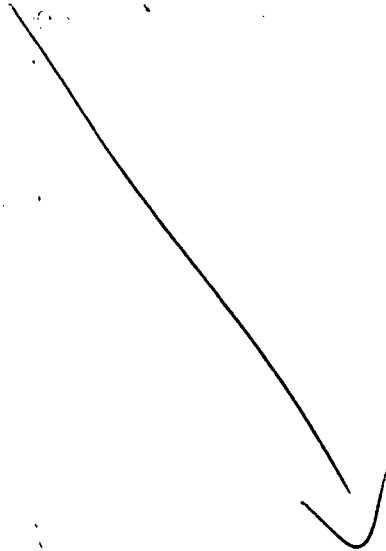
04.01.2010

On the request of parties list on  
5.1.2010 for further argument.

(Madan Kr. Chaturvedi)  
Member (A)

(Mukesh Kr. Gupta)  
Member (J)

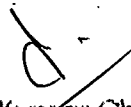
/pg/



O.A. NO. 73/2007

05.01.2010

Heard Mrs R.S. Choudhury, learned counsel for applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. For the reasons recorded separately O.A. stands disposed of.

  
Madan Kumar Chaturvedi)  
Member (A)

  
(Mukesh Kumar Gupta)  
Member (J)

nkm

19-1-2010

Judgment/Final Order  
dated 5/1/2010 Prepared  
and sent to the Dispatch  
Section for issuing the all  
the respondents by Post.  
and issued to Advocate  
for the both side  
vide NO 186 & 187  
dated 19-01-2010

17  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

.....  
O.A.No.73 of 2007

DATE OF DECISION: 05.01.2010

Mrs L.R. Mithran

.....Applicant(s)

Mrs R.S. Choudhury

Advocate(s) for the  
Applicant (s)

- Versus -

Union of India and others

Respondent(s)

Mr M.U. Ahmed, Add. C.G.S.C.

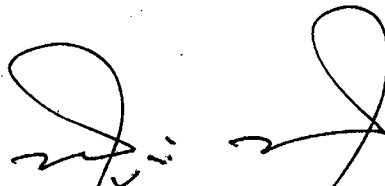
Advocate(s) for the  
Respondent(s)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

- |    |  |   |
|----|--|---|
| 1. | Whether reporters of local newspapers<br>may be allowed to see the Judgment? | Yes/No<br><input checked="" type="checkbox"/> |
| 2. | Whether to be referred to the Reporter or not?                               | Yes/No<br><input checked="" type="checkbox"/> |
| 3. | Whether their Lordships wish to see the fair copy<br>of the Judgment?        | Yes/No<br><input checked="" type="checkbox"/> |

  
Member(J)/Member(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No.73 of 2007

Date of Order: This the 5<sup>th</sup> day of January 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Mrs L.R. Mithran  
Commissioner of Central Excise (Rtd.),  
Mercy Dez Villa, Nongrim Hills,  
Shillong-783003.

..... Applicant

By Advocate Mrs R.S. Choudhury.

- versus -

1. Union of India  
(Through the Secretary to the  
Government of India,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi-110001).

2. The Chairman  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi - 110001.

..... Respondents

By Advocate Mr M.U. Ahmed, Addl. C.G.S.C.

.....

**ORDER (ORAL)**

**MUKESH KUMAR GUPTA, JUDICIAL MEMBER**

Smt L.R. Mithran, IRS (Retd.), in this O.A. challenges Presidential Order dated 21.03.2006 whereby a penalty of 25% cut in monthly pension otherwise admissible to her for a period of ten years have been imposed.

9

2. Admitted facts are that, Rule 14 proceedings of CCS (CCA) Rules, 1965 were initiated against her vide memorandum dated 13.12.2001, which contained three articles of charge namely,

"ARTICLE OF CHARGE - I

WHEREAS Smt L.R. Mithran, while functioning as Commissioner, Central Excise, Shillong, failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant inasmuch as she, during the year 1996/97 obtained employment for her son Shri A.R. Mithran with M/s Kitply Industries Ltd. Calcutta with whom she had official dealing, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE - II

WHEREAS Smt L.R. Mithran, IRS while acting as Commissioner, Central Excise, Shillong during the year 1996/1997 failed to maintain absolute integrity and acted in an unbecoming manner inasmuch as she, accepted donation/gift by way of Bank Draft, including Tata Mobile vehicle bearing Regd. No.ML-05-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kit Ply Industries with whom she had official dealings and thereby contravened rule 3(1)(i) and (iii) of the CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE - III

WHEREAS Smt L.R. Mithran, IRS while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Trust (ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority and thereby contravened rule 18(3) and 3(1) of CCS (Conduct) Rules, 1964."

3. She attained the age of superannuation on 31.07.2002 and immediately thereafter, Inquiry Officer vide his report dated 28.08.2002 (Annexure-5), endorsed on 03.03.2004, concluded that the charges were not proved. Disagreeing with said findings of Inquiry Officer, the Disciplinary Authority issued show cause notice dated 29.01.2004 and assigned tentative reasons for its conclusion. Reply to


aforesaid show cause and disagreement was preferred on 05.06.2004 (Annexure-7) and thereafter the matter was referred to UPSC for its advice on 17.08.2005. Based on UPSC advice dated 17.01.2006, the Presidential order dated 21.03.2006 (Annexure-8) had been passed inflicting aforesaid penalty.

4. Said penalty had been impugned in present proceedings. Mrs R.S. Choudhury, learned counsel for applicant, vehemently contended that it was a case of no evidence. No new material was placed before the UPSC to conclude the guilt against her. Rather UPSC in its advice dated 17.01.2006 vide para 6, in specific, observed that: "it appears that there is no immediate connectivity between the event of CO's passing the adjudication order and offer of acceptance of the casual engagement by her son". Learned counsel further contended that so called reasons assigned for disagreement are no reasons in the eyes of law. Applicant's son as well as other witnesses who had appeared before Inquiry Officer had filed duly sworn affidavits stating that applicant's son was not staying with her and in such circumstances she had no knowledge about his gainful employment with M/s Kit Ply. Initially, a notice for payment of about 36 Crores had been raised against M/s Kit Ply Industries on the alleged ground of central excise duty evasion. In the adjudicatory proceedings she being a quasi judicial officer had passed order dated 05.12.1996 slicing down said amount to Rs.8,13,40,448/- (comprising of Rs.7,05,95,368/- on account of non-inclusion of advertisement cost incurred by M/s Landle in the assessable value, Rs.48,48,500/- on account of non-inclusion of interest accrued on the deposit of Rs.2 crores made by M/s Landle to M/s Kitply Industries Ltd. and Rs.58,96,580/- on account substitution of grade in the seven Depots as

indicated in the said Order). Thereafter, Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata vide its Order dated 15.06.1999 sliced down said amount of Rs.8,13,40,448/- to a much smaller amount of Rs.58,96,580/- plus penalties of Rs.10 lacs. Said order has been affirmed by Hon'ble Supreme Court dismissing Civil Appeal filed by the Department. In such circumstances, it was stated that applicant had exercised her power as quasi judicial officer, judiciously and not arbitrarily and further there was no allegation of any motive in passing said order.

5. It was further contended that though order dated 21.03.2006 in specific required the authorities to release gratuity admissible to her, there had been an abnormal delay in releasing said amount, which was released in March 2009. Thus, it was emphasized that applicant was entitled to interest for delay in payment of gratuity.

6. By filing reply, the respondents have contested the claim made by applicant stating that three articles of charge were duly proved by assigning reasons for disagreement with the findings recorded by Inquiry Officer. Said disagreement note had been served on her and she indeed made a representation on 05.06.2004. Thus principles of natural justice, as enshrined under Rule 15 (2) of CCS (CCA) Rules, 1965 were duly observed. UPSC as well as the Disciplinary Authority vide order dated 21.03.2006 have made out a clear case that she is guilty of grave misconduct inasmuch as the Trust created in the name of her late mother had received certain benefits from a firm with whom she had official dealings. Not only this, her son secured an employment, though it was stated to be of temporary nature only for a period of three months. UPSC had




supported the view taken by the Disciplinary Authority that she had concealed from the department about her participation in the activities of said Trust. Said aspects amounted to grave misconduct on her part and following principles of preponderance of probability, which is a test in departmental proceedings, department was justified in imposing penalty of 25% cut in pension otherwise admissible for a period of ten years. Learned counsel further contented that scope of judicial review in departmental proceedings is very limited in nature namely, to the extent whether principles of natural justice were observed, delinquent official was afforded reasonable opportunity and whether penalty imposed is commensurate with the established charges. UPSC advice was sought in terms of the mandate of Article 320 (3) (c) of the Constitution of India read with Regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958. Applicant who was a Commissioner of Central Excise having territorial jurisdiction over manufacturing unit of M/s Kit Ply Industries Ltd., had shown undue favour by bringing down a huge chunk of demand against them. Circumstances suggest that applicant could not have been totally unaware of the assignment given to her son by M/s Kitply Industries Ltd. It was incumbent upon her to intimate the department about employment of her son with M/s Kitply Industries Ltd., Kolkata with whom she had official dealings, which duty cast upon her had not been discharged. It is immaterial whether the employment was permanent or temporary in nature, emphasized Mr M.U. Ahmed, learned Addl. C.G.S.C. Our attention was also drawn to the advice rendered by UPSC wherein it has been observed that applicant, from the records available, was a founder member of the Trust and had deposited registration fees herself and further conclusions drawn by

UPSC vide para 7 of its report namely that, there was no escape from the conclusion that CO had an important role to play in Zami Memorial Trust which received a vehicle and certain amount in the name of the Trust from a Tea Company as well as from unknown sources. She being a Commissioner of Central Excise and a very senior officer, thus, had committed gross misconduct and charges as proved were grave in nature to entail the penalty imposed.

7. We have heard Mrs R.S. Choudhury, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents, perused the pleadings and other material placed on record. At the outset, we may note that scope of judicial review in departmental proceedings has been amply and emphatically dealt with from time to time. It has been observed that when findings are based on some evidence, had link with material placed on record, merely because a Court/Tribunal is of the view that another view is possible could not be a ground to set at naught said findings. In the present case, we noticed that though Inquiry Officer had exonerated her, the President being the Disciplinary Authority issued show cause notice dated 29.01.2009 assigning reasons for disagreement. Thus applicant was afforded reasonable opportunity of hearing, which opportunity indeed was availed by her by submitted representation dated 05.06.2004. It was only after considering show cause notice issued on 29.01.2004, representation submitted by her thereto and on the advice received from UPSC, the Disciplinary Authority in its wisdom decided to pass impugned penalty order dated 21.03.2006 imposing 25% cut in her monthly pension for a period of ten years. Which penalty needs to be imposed in a particular case is within the exclusive domain of the Disciplinary Authority as held in Union of

India Vs. Parmananda, (1989) 2 SCC 177. As noticed hereinabove, the Articles of Charge levelled against her namely, acceptance of certain gifts in cash and kind from a firm with whom she in recent past had official dealings and the donations/gifts given to the Trust of which she was a founder member as well as employment of her son with the concerned firm certainly amounts to grave misconduct on the part of a senior Revenue Official. Merely because order passed by her in the adjudicatory proceeding had been sustained could not be a ground to discount the test of preponderance of probability, which is a standard employed and insisted upon in departmental proceedings. Moreover we may note that in Union of India vs. Duli Chand, 2006 SCC (L&S) 1186, it has been clarified that law laid down in Zunjarrao Bhikaji Nagarkar vs. Union of India, (1999) 7 SCC 409, holding that, "disciplinary proceeding would not lie against the officer discharging quasi-judicial functions unless it were established that the officer concerned had obtained an undue advantage thereby or in connection therewith", is not a good law for the reason that Union of India vs. K.K. Dhawan. (1993) 2 SCC 56, had been decided by a larger Bench of three Hon'ble Judges in comparison to two Bench decision in Zunjarrao case (supra). In K.K. Dhawan case (supra), Hon'ble Supreme Court listed six instances when disciplinary proceedings could be initiated against an officer exercising judicial or quasi-judicial powers, which included an instance/situation when there is a prima facie material to show recklessness or misconduct in the discharge of his/her duty, or an officer acted in order to unduly favour a party.

8. Merely because there was no allegation of undue favour to M/s Kitply Industries, levelled against her, would not be a ground to



contend that, based on preponderance of probability, the Disciplinary Authority was not justified to disagree with the findings of Inquiry Officer exonerating her. We may observe that UPSC in its advice has clearly referred to cross-examination of her son to the effect that he was staying with his mother and offer to said post from M/s Kitply Industries had been received through post on her residential address. This in itself suggests that plea raised by her that she had no knowledge about gainful employment of her son was rightly rejected and not accepted by the competent authorities. Securing gainful employment of near relatives with entities and bodies with whom she had official dealings without obtaining prior permission certainly cannot be viewed lightly, as projected by her. Thus we are of the view that on merit this Tribunal would not be justified to interfere with findings recorded by the Disciplinary Authority, a view which had been possible in law. Our attention was also drawn to other paras of UPSC advice, which we have considered.

9. As far as payment regarding gratuity is concerned, we may note that the only prayer made by her in the pleadings vide paras 8 and 9 had been with regard to quashing of penalty order of 25% cut in her monthly pension and restoration of full pension. There was no specific prayer on account of either non-payment of gratuity or delayed payment of said amount. Vide para 9 dealing with interim prayer, she had made a request that respondents be directed to release her gratuity. Interim order has to be examined alongwith main prayer, and cannot be read in isolation. It was pointed out to us that gratuity amount had been released belatedly in March 2009, though penalty order was passed on 21.03.2006 and direction was issued to release Gratuity vide the said order. Learned counsel for respondents

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fairly stated that applicant can be allowed to make appropriate representation to the concerned authorities on this aspect and on examination if it is found that there was no justification in withholding gratuity amount, despite specific direction issued on 21.03.2006, necessary relief on that account would be admissible to her. In this view of the matter, we hold that she would be at liberty to make appropriate representation to concerned authorities highlighting these aspects and if such a representation is preferred within a month from today, the same shall be considered by the authorities objectively by passing a reasoned and speaking order. What could be the rate of interest, is not an issue to detain us further, as normal bank rate of 8% would be a guiding factor to determine her claim. Aforesaid exercise shall be completed within a period of three months from the date of receipt of her representation.

10. O.A. accordingly stands disposed of. No costs.

  
(MADAN KUMAR CHATURVEDI)  
ADMINISTRATIVE MEMBER

  
(MUKESH KUMAR GUPTA)  
JUDICIAL MEMBER

APPENDIX A

[FORM-1]

APPLICATION UNDER SEC.19 OF THE ADMINISTRATIVE  
TRIBUNALS ACT, 1985

Title of the Case:

Mrs. L.R.Mithran

Commissioner of Central Excise (Rtd.)

Mercy Dez Villa, Nongrim Hills,

Shillong-793003.

Vs

1- Union of India

(Through: The Secretary to the Government of India, Ministry of Finance,

Department of Revenue, North Block, New Delhi-110001)

\* 2. The Chairman, M.P.S.E., Dhalpur House,  
Shahjahan Road, New Delhi-110001

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\*  
(Impleaded resp. no-2 COMPILATION I  
as per order dt. 7/11/08  
passed in OA 73/07 in  
connection with mp-1/08)

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|----|---|------------|
| 1. | Application   | page 1- 34 |
| 2. | Copy of impugned order No. C.14011/39/2001-Ad.V/1330<br>dated 21.3.2006 (A-1) | page 35-41 |

## COMPILATION II

3. Copy of Charge Sheet Memorandum  
No.C-14011/39/2001-Ad.V -4078-84  
dated 13.12.2001 issued to the Applicant (A-2) ..... page 42-52
4. Copy of the Order No. C-14011/39/2001-AdV-978-85  
Dated 13.03.2002 appointing the  
Inquiry Officer (A-3) ..... page 53
5. Copy of the Defence Brief submitted before  
the Inquiry Officer (A-4) .....page 54-288
6. Copy of the Report of the Inquiry Officer (A-5).....page 289-350
7. Copy of the Show Cause Notice  
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findings of Inquiry Officer (A-6) .....page 351-352
8. Copy of the reply dated 5.6.2004 by the applicant  
to the said Show Cause Notice dat.29.1.2004 (A-7)...page 353-361

9. Copy of the letter No.F.3/268/2005-SI dated

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Signature of the Applicant

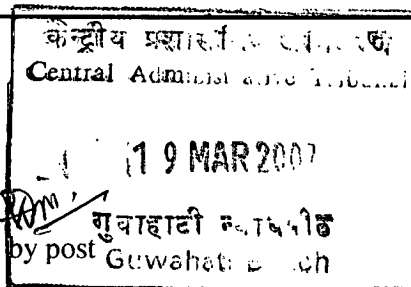
For use in Tribunal's Office

Date of filing

Or

Date of receipt by post

Registration No. A 78/07



Signature

for Registrar

13/12/01  
~~31/03/02~~  
31/07/02 - Retd.  
03/03/04 - ER  
13/01/06 - UPSC  
21/03/06

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Mrs. L.R.Mithran

Commissioner of Central Excise (Rtd.)

Mercy Dez Villa, Nongrim Hills,

Shillong-793003

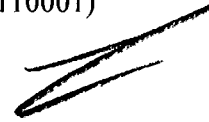
**APPLICANT**

Vs

Union of India

(Through: The Secretary to the Government of India, Ministry of Finance,

Department of Revenue, North Block, New Delhi-110001)



**RESPONDENT**

**DETAILS OF APPLICATION:**

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

Order No.C.14011/39/2001-Ad.V./1330 dated 21.3.2006 passed by the President of India and communicated by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.

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**2. Jurisdiction of the Tribunal :**

The applicant declares that the subject-matter of the order against which she seeks redressal is within the jurisdiction of this Tribunal.

**3. Limitation :**

The applicant further declares that the application is within the limitation period prescribed in Sec. 21 of the Administrative Tribunals Act, 1985.

**4. Facts of the Case :**

(Given here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue of the fact.

1.1.1 The applicant herein was issued a Charge Sheet Memorandum No.C-14011/39/2001-Ad.V dated 13.12.2001 (Annex.A-2) containing three charges as under:

Article I of the Charge read as under :

“3.1 Whereas Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain

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absolute integrity and acted in an unbecoming manner in as much as she during the year 1996-97 obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited, Kolkata with whom she had official dealings, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of C.C.S. Conduct Rules, 1964.”

Article II read as under :

“3.2 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she accepted donation/ gift by way of bank draft, including Tata Mobile Vehicle bearing Registration No. ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s. Warren Tea Limited, a sister concern of M/s. Kitply Industries Limited with whom she had official dealings and thereby contravened rule 3(4) (i) and (iii) of C.C.S. Conduct Rules, 1964.”

Article III read as under :

“3.3 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs. 1 lakh in the name of Zami Memorial Charitable Trust (ZMCT) from unknown and dubious source through bank draft without intimation/ permission from the competent authority and thereby contravened rule 18(3) and 3(1) of C.C.S. Conduct Rules, 1964.”

2. The Inquiry Officer was appointed and after holding a thorough inquiry, the Inquiry Officer held all the three charges as **NOT PROVED** in his report marked as Annex. A-5 to this application. In spite of this clear exoneration of the applicant, and all the evidence on record establishing the innocence of the applicant, the Disciplinary Authority has imposed a penalty of reduction of the pension of the applicant by order NoC.14011/39/2001-Ad.V/1330 dated 21.3.2006 (Annex.A-1) under challenge in these proceedings, acting merely on the advice of UPSC which has been given without proper appreciation of the evidence on record.

3. The defence of the applicant and evidence in support thereof in respect each charge, and also the decision of the Inquiry Officer in respect of each charge is as under:

3.1.1 Article 1 of the Charge

“3.1 Whereas Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she during the year 1996-97 obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited, Kolkata with whom she had official dealings, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of C.C.S. Conduct Rules, 1964.”

3.1.2. Defence of the Charged Officer to Article 1 :

The Charged Officer had pleaded that she had neither secured the employment of her son Shri A.R. Mithran with M/s. Kitply Industries nor was she even aware of this employment during the relevant time.

3.1.3. Evidence in support of the Defence for Article 1:

The Charged Officer adduced detailed evidence before the Inquiry Officer to establish that her son Mr. A.R. Mithran had neither informed her about his assignment with M/s. Kitply Industries nor she had any other means to know about it.

3.1.4 The Inquiry Officer had gone into all the evidence so adduced by the Charged Officer in her defence and observed as under in his report (Annex.A-5):

“In this connection, defence has relied on the affidavit shown by Mr. A.R. Mithran on 25.7.2000 before the Judicial Magistrate First Class, Shillong. A copy of the Affidavit is appended as Annexure “B-3” to this Defence Brief and has been adduced in evidence during hearing on 10.8.2002. This affidavit reads inter alia as under :

“(iv) That in order to further explore the potential of the coal business and export, I met a number of persons engaged or planning to get engaged in this business. This brought me in contract with Mr. S.N. Jagodia of M/s. Kitply Industries Limited whose Company was interested in export of coal from Ghasuapara and Tura. Being convinced that I could promote their business at Tura or Ghasuapara in the field of coal export, they engaged me temporary for three months on trial basis vide their letter dated 25.7.1997 and also provided me facilities like accommodation, transport, electricity and phone, etc. in order to promote their business.

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(v) That I was living independently throughout and did not consider necessary to inform my mother Mrs. L.R. Mithran about my work with M/s. Kitply Industries Limited nor she helped me in any manner whatsoever In getting me this work or engaged.

(vi) That I left Tura in December, 1997 as the coal business could not take off profitably and it also ended my association with M/s. Kitply Industries Limited.

(ix) That I am presently having my own business at Aizawl since 1998.

(x) That I have been living independently on my own since attaining the age of majority, and have neither asked for any help from my parents in the matter of my employment or business, nor have I considered it necessary to keep them informed about my profession, occupation, employment or business."

Mr. A.R. Mithran himself appeared as a defence witness. His testimony is enclosed as Annexure C-3 to this Defence Brief. When asked as to how he got the temporary assignment with M/s. Kitply Industries Limited for about 3 months, he stated that many of his friends were engaged in coal business and he also thought of joining the same business when he came in contact with Shri S.N. Jagodia of M/s. Kitply Industries Limited. Shri A.R. Mithran stated that

M/s. Kitply Industries Limited were already in the business of coal export and were looking for someone to further their coal business at Ghasuapara at Tura. He stated that being convinced of his potential, Ms. Kitply Industries Limited engaged him temporarily for 3 months on trial basis and also provided him the facilities like accommodation, transportation, electricity, telephone etc. in order to promote their business. He stated categorically that his mother, Mrs. L.R. Mithran did not help him in getting this assignment/engagement with M/s. Kitply Industries Limited. He stated further that he did not inform his mother about this. He stated that although he was temporarily staying in his mother's home in May 1997, he was living independently. He stated further that since completing his graduation in 1993, he had been living independently and did not consider it necessary to inform his mother about his activities. He stated specifically that he did not inform about his assignment with M/s. Kitply Industries Limited. This does not appear to be unnatural in the highly westernized atmosphere prevailing in North East."

3.1.5 Inquiry Officer's conclusion on Article 1 :

After taking into account all the evidence on record, Inquiry Officer has concluded under:

“6) If the contents of the affidavit of Shri A.R. Mithran and also his oral testimony are read in conjunction with the testimonies of prosecution witnesses, namely, Shri R.P. Bose, Deputy Superintendent of Police, CBI (Annex. A-1), Shri D.K. Thakuria (Annex. A-4), Shri Shambhunath Jojodia (Annex. A-5), Shri P. Haridasan Nair (Annex. A-6), it becomes clear that there is no evidence that Mrs. L.R. Mithran had either secured the employment of her son or was even aware of this fact at the relevant time. The charge is based only on an inference and there is no direct evidence to show that she had any role to play in the temporary engagement of Shri A.R. Mitran. M/s. Kitply Industries have not testified to the truth of prosecution story nor Mr. A.R. Mithran has accepted that his mother Mrs. L.R. Mithran had any role to play in his temporary engagement with M/s. Kitply Industries. Thus there is no direct evidence to support this charge.”

3.2.1 Article II and Article III of the Charge :

Article II reads as under :

“3.2 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she accepted donation/ gift by way of bank draft, including Tata Mobile Vehicle bearing Registration No. ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s. Warren Tea Limited, a sister concern of M/s. Kitply Industries Limited with whom she had official dealings and thereby contravened rule 3(4) (i) and (iii) of C.C.S. Conduct Rules, 1964.”

Article III reads as under :

“3.3 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs. 1 lakh in the name of Zami Memorial Charitable Trust (ZMCT) from unknown and dubious source through bank draft without intimation/ permission from the competent authority and thereby contravened rule 18(3) and 3(1) of C.C.S. Conduct Rules, 1964.”

3.2.2. Defence of the Charged Officer to Article II and Article III

:

The Charged Officer had vehemently argued in her defence, and also proved it by evidence of not less than 14 witnesses who appeared in person before the Inquiry Officer, that she did not deal with the day-to-day affairs of the Zami Memorial Charitable Trust and hence had no knowledge about any donation, whether in cash or in kind, to this Trust. The Charged Officer had proved beyond any reasonable doubt that no donation was made to her or at her instance, nor was she aware at any time about any such donation.

3.2.3. Evidence in support of the Defence for Article II and Article III :

(a) The Charged Officer filed fourteen affidavits duly sworn before the Judicial Magistrate by the following persons to establish that she neither had knowledge about any donation/ gift to the Trust nor was in any way instrumental in procuring it :

- i. Mrs. Lalthan Zauvi before the Judicial Magistrate First Class, Aizawal on 07.08.2002
- ii. Mrs. L. Chungnungi before the Judicial Magistrate First Class, Shillong on 25.07.2002

- iii. Mrs. Laldawni before the Judicial Magistrate First Class, Shillong on 25.07.2002
- iv. Mrs. Lalniahchawngi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- v. Mrs. Lalremawii before the Judicial Magistrate First Class, Shillong on 25.07.2002
- vi. Mrs. Darthahniengi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- vii. Mrs. Hlimpuji before the Judicial Magistrate First Class, Shillong on 25.07.2002
- viii. Mrs. Esther Lianchhawni before the Judicial Magistrate First Class, Shillong on 25.07.2002
- ix. Mrs. L.T. Muani before the Judicial Magistrate First Class, Shillong on 25.07.2002
- x. Mrs. Van Lalruati before the Judicial Magistrate First Class, Aizawal on 07.08.2002

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- xi. Mrs. Lilypuji before the Judicial Magistrate First Class, Shillong on 25.07.2002
  - xii. Ms Biaksangi before the Judicial Magistrate First Class, Shillong on 25.07.2002
  - xiii. Ms. Rose Mary Lalhmangaihzuai before the Judicial Magistrate First Class, Aizawal on 07.08.2002
  - xiv. Mr. H.S. Kumbhat before the Judicial Magistrate First Class, Shillong on 22.07.2002

(b) Seven defence witnesses who appeared from the defence were Mrs. Laldawni (Annexure "C-4"), Mrs. Lalthan Zauvi (Annexure "C-7"), Ms. L.T. Muani (Annexure "C-8"), Ms. Lalremanwii (Annexure "C-9") and Mrs. L. Chungnungi (Annexure "C-10"). All these witnesses have been associated with Zami Memorial Charitable Trust as office bearers or as its members. In their oral testimony before the Inquiring Authority, all of them stated categorically that --

- (i) Mrs. L.R. Mithran did not have control over the decision of the Governing Body which took the final decisions;
- (ii) Mrs. L.R. Mithran was not authorized to handle cash, property or bank accounts of the Trust;
- (iii) The properties of the Trust were not used for any purpose other than purposes for which the Trust had been created;
- (iv) Mrs. L.R. Mithran or any member of her family did not ever use any movable or immovable property of the Trust;
- (v) Mrs. L.R. Mithran did not solicit any donations in cash or any kind from any company, business house or organization for Zami Memorial Charitable Trust;
- (vi) No donations in cash or kind from any company, business house or organization were received through Mrs. L.R. Mithran.
- (vii) Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust as the same were looked after by the office bearers;
- (viii) The control over the Trust was with the Governing Body and not with Mrs. L.R. Mithran.

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3.2.4 Inquiry Officer's findings (Annex.A-5) in respect of Article II and Article III of the Charge :

The findings of the Inquiry Officer in respect of Charge II and III are :

“41. Coming to Charge No.2, while the needle of suspicion points to Mrs. L.R. Mithran, the documentary and oral evidence does not go as far as to establish beyond a reasonable doubt that she was guilty of the alleged misconduct. In Jaharlal Das Vs. State of Orissa, AIR 1991 SC 1388, the Hon'ble Supreme Court held that in cases depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of proof. Therefore, various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule-out a reasonable likelihood of the innocence of the accused. In the instant cases, Shri S.P. Goenka of M/s. Kitply Industries Limited is a vital link in the chain of evidence as he has been referred to as the key person who asked Ms. Warren Tea Limited to donate money and vehicle to the Zami Memorial Charitable Trust. The chain of circumstantial evidence appears to break at Shri S.P. Goenka as he has neither been called as a prosecution witness nor his statement recorded at any time before any authority has been brought on record. No reason has been

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adduced in the Charge Sheet or by the Presenting Officer as to why the said Shri S.P. Goenka has not been called as a witness to prove or explain the sequence of facts underlined in the Charge Sheet. His unexplained absence in the chain of prosecution evidence raises doubts about the existence of acts alleged in the Charge Sheet to be attributable to him either directly or in collusion with Mrs. L.R. Mithran.

42. Four of the prosecution witnesses, namely, Shri D.K. Thakuria of M/s. Kitply Industries Limited, Shri Sambhunath Jajodia, Director of M/s. Kitply Industries Limited, Shri P. Haridasan Nair and also Shri Anil Kumar Banka of M/s. Kitply Industries have stated in the course of their cross-examination that the donations to Zami Memorial Charitable Trust were neither solicited by Mrs. L.R. Mithran nor were these given to her. Affidavits of Office Bearers or Members of Zami Memorial Charitable Trust, adduced in evidence by the Defence also testify to the fact that Mrs. L.R. Mithran was not instrumental in any way in getting these donations. It has been further affirmed in these affidavits that Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust and all the decisions of the Trust were taken by the Governing Body and not by Mrs. L.R. Mithran. The defence witnesses appearing before the Inquiring Authority have also affirmed the same.

43. It has not been proved beyond reasonable doubt as to how Mrs. L.R. Mithran or any member of family benefited or could have benefited from any donation given to Zami Memorial Charitable Trust. As per the Rules and Regulations of the said Trust, she or her family could not be the beneficiary of the Trust. The documentary as well as oral evidence adduced by the Charged Officer proves that the cash and movable or immovable properties of the Trust have never been used for the benefit of Mrs. L.R. Mithran or any member of her family. On the other hand, the affidavit sworn by the first President of the Trust and adduced in evidence shows that Mrs. L.R. Mithran donated her own land with present worth Rs. 25 lakhs to the Trust for setting up a free de-addiction centre.

44. It is not proved beyond surmises and conjectures that Mrs. L.R. Mithran, Charged Officer, was aware of the donation of money and vehicle by M/s. Warren Tea Limited to the Zami Memorial Charitable Trust although the possibility of her being aware of these donations cannot be ruled out. As pointed out earlier, the Hon'ble Supreme Court has held in **Ministry of Finance and Another Vs. S.B. Ramesh, (1998) 3 SCC 227 : AIR 1998 SC 853**, that suspicion, howsoever strong, cannot be substituted for proof even in a departmental disciplinary proceedings.

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45. In view of the above, Charge No.2 is also not proved.

46. Coming to Charge No.3, all the documentary evidence as well as oral evidence, including the Investigating Officer's reply to questions put to him during his cross-examination, establish beyond any doubt that the draft of Rs.1 lac from an unidentified person and in favour of Zami Memorial Charitable Trust was received in the Trust's office by post. Therefore, the said money cannot be said to have been received by Mrs. L.R. Mithran which would have made it obligatory for her to seek prior approval or give intimation to the Government. No link between this donation and Mrs. L.R. Mithran has been established after taking into account the documentary and oral evidence by defence witnesses. Therefore, Charge No.3 is also not proved."

4.1.1. The Disciplinary Authority sought to disagree with the findings of the Inquiry Officer and a Show Cause Notice NoC.14011/39/2001-Ad.V dated 29.1.2004 (Annex.A-6) was issued to the applicant.

4.1.2 The grounds on which the Disciplinary Authority proposed to disagree with the findings of the inquiry officer and the reply given by the applicant to the said show cause notice are as under:

4.1.3 Reasons cited in the instant Show Cause Notice for the disagreement of Disciplinary Authority with the Inquiry Officer's findings on Article 1 of the Charge:

The findings of the Inquiry Officer are proposed to be disagreed to for the following reasons:

(i) The findings of the IO does not appear to be in conformity with provisions of Rule 4(2)(i) which says, "A Govt. servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any company or firm, intimate such acceptance to the prescribed authority and shall also intimated whether he has or has had any official dealings with that company or firm". Therefore, it was incumbent upon Mrs. Mithran to intimate to the Department about the employment of her son with Ms. Kitply Industries Ltd., Kolkata with whom she had official dealings, which she failed to do so. It is immaterial whether the employment was temporary or permanent as the Rule 4 ibid does not make any difference in permanent and temporary employment.

(ii) She has also not intimated to the Department that her son was independent since he attained majority as required under Rule 15(3) of CCS (Conduct) Rules, 1994. Hence,

findings of the IO in respect of Article-1 of the Charge are not tenable.

4.1.4 The applicant replied as under to the above :

a) I have established beyond a reasonable doubt by adducing abundant evidence detailed in para 5 above (which is also accepted and relied upon by the Inquiry Officer) that my son never made me aware of his assignment with M/s. Kitply Industries. I agree that is immaterial whether the employment was temporary or permanent. However, I emphasize that as I was not aware of this employment, irrespective of its being permanent or temporary, it could not have been possible for me to intimate about such employment to the prescribed authority. The disciplinary authority cannot assume, contrary to all evidence on record and also the findings of the Inquiry Officer, that I was aware of such employment.

I cannot be punished for the supposed lapse of the part of my grown-up son in keeping me informed about all his activities. He has stated on oath in the affidavit as well as before the Inquiry Officer that he never informed me about his employment with M/s. Kitply Industries. I could not have informed the Department without having been aware myself about it.

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b) Regarding the reason stated in para 7(ii) above, I have only to say that Rule 15(3) of CCS (Conduct) Rules, 1964 has been misquoted to allege that I have also not intimated to the Department that my son was independent since he attained majority. There is no requirement under the said Rule to inform the Department as and when an employee's child attains majority and becomes independent. I reproduce below the Rule 15(3) of the said Rules:

**“(3) Every Government shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.”**

Even a plain reading of this rule makes it abundantly clear that there is no requirement under this Rule to inform the Department when an employee's child attains majority and becomes independent, so long as he does not engage in trade or business or owns or manages an agency which is admittedly not the situation the present case.

c) In view of the above, I humbly submit that the Inquiry Officer's report is sought to be disagreed upon on frivolous grounds.

JX

4.2.1 Reasons cited in the instant Show Cause Notice for Disciplinary Authority's disagreement with the Inquiry Officer's findings in respect of Article II and Article III of the Charges :

The Show Cause Notice cited the following reasons for disagreement with IO's report :

"As regards Article II and III of the Charge, the IO has held that evidence is necessary which can confirm either the CO's demand and/or acceptance or the knowledge/awareness of the above donations in addition to the point as to who was the beneficiary ultimately. It is observed that the findings of the IO appears to be deficient because lapses on the part of Mrs. Mithran on this account vis-à-vis Conduct Rules involved have not been analyzed by the IO. It is a fact that Trust was created by her during the pendency of the adjudication proceedings. She was one of the main promoters of the Trust and she herself had deposited the registration fees, which indicate that she has been actively associated with accepting donations/ gifts by way of bank drafts including Tata Mobile vehicle given to Zami Memorial Trust which were paid by M/s. Warren Tea Ltd., a sister concern of M/s. KIL, with whom she had official dealings. The act of her concealment goes to prove her failure to maintain absolute integrity and indulging in actions

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unbecoming of a Govt. servant. Thus, findings of IO in respect of Article II and III of the charge are also not tenable.”

4.2.2. Applicant’s submissions on the above reasons in respect of Article II and Article III were as under:

(i) The Disciplinary Authority proposes to disagree wrongly with the IO on the grounds that the findings of IO appear to be deficient because the lapses on the part of Mrs. Mithran in relation to donation vis-à-vis Conduct Rules involved have not be analyzed. It is humbly submitted that all the evidence, documentary as well as oral, establishes beyond a reasonable doubt that I was not aware of any such donation or gift received by the said Trust. It would be contrary to law and principles of justice to attribute to me the knowledge about such donation or gift, in spite of undisputable evidence on record. I have proved beyond a reasonable doubt that though I was one of the main promoters of the Trust and had myself deposited the registration fee, I was not dealing with the day-to-day affairs of the Trust and had no means to know about the said donations. There is no evidence at all on record to establish that any such donation was at my instance or I was even aware of any such donation. I cannot be accused of having concealed any fact about which I was not aware at all. Such grave charges as have been leveled against me need to be

supported by evidence and not by suspicions. Leave aside the huge evidence adduced by me to establish that I was not dealing with day-to-day affairs of the Trust and was not made aware by any office bearer or member of the Trust about any donation or gift. Even the departmental witnesses have not supported these Charges. The whole case against me is built on presumptions and assumptions. Relying on the judgment of the Hon'ble Supreme Court in Ministry of Finance Vs. S.B. Ramesh (1998) 3 SCC 227 : AIR 1998 SC 853, the Inquiry Officer has rightly held that suspicion, howsoever strong, cannot be substituted for proof even in departmental disciplinary proceedings.

4.3.1 The applicant humbly submitted and prayed to the Disciplinary Authority that she was not guilty of any misconduct, and the Inquiry Officer's findings should not be disagreed with on frivolous grounds unsubstantiated by any evidence. She added that she had retired from service long back and should be allowed to live her retired life peacefully. She desired to be heard in person if any decision contrary to the findings of Inquiry Officer was proposed to be taken.

5. The Disciplinary Authority then referred the matter to UPSC which advised as under in their letter dated 17.1.2006 (Annex. A-8):

AND WHEREAS taking all facts and circumstances of the case in their totality, the Commission came to the conclusion that although it is not conclusively proved that while passing the adjudication order dated 5.12.96 on Show-cause Notice dated 28.2.95 issued by the Commissioner, Central Excise, Shillong to M/s. Kitply Industries Ltd., slicing down the Central Excise Duty to Rs. 8,13,40,448/- to be paid by M/s. Kitply Industries Ltd., had committed any illegality or acted with malafide motive to show any undue favour to be said firm, the Articles I, II and III of the Charge stand proved to the extent as discussed in para 9 and 10 above. Further, considering that CO, being a Commissioner of Central Excise, was a very senior officer, the gross misconduct committed by her in view of the Articles of Charge as stand proved becomes very grave.

13. AND WHEREAS in the light of their observations and findings and after taking into account all other aspects relevant to the case, the Commission observed that the charges established against the Charged Officer, constitute grave misconduct on her part and advised that the ends of justice would be met in this case if the penalty of withholding of 25% of the monthly pension otherwise admissible to Smt. L.R. Mithran is imposed on her for a period of ten years and further the gratuity admissible to her should be released if not required otherwise.

6. The Disciplinary Authority has passed the impugned order without due application of mind, ignoring totally the findings of the Inquiry Officer and also the facts and evidence on record, relying merely on the UPSC's advice which has been given without due appreciation of evidence and is based merely on surmise and conjectures.

7. The impugned order is thus null and void ab initio on the ground of having been passed without due application of mind and relying merely on the advice of an authority which neither gave a hearing to the applicant nor appreciated the facts and evidence on record.

**5. Grounds of relief with legal provisions:**

1. The impugned order has been passed by the Disciplinary Authority without due application of mind, ignoring totally the findings of the Inquiry Officer and also the facts and evidence on record, relying merely on the UPSC's advice which has been given without due appreciation of evidence and is based merely on surmise and conjectures.

2. The impugned order is null and void ab initio also on the ground of having been passed in violation of the principles of natural justice in as much as it has been passed without due application of mind and

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relying merely on the advice of an authority which neither gave a hearing to the applicant nor appreciated the facts and evidence on record.

**6. Details of the remedies exhausted :**

The impugned order is passed by the President of India against which no appeal lies. Hence, there is no remedy available except this application before the Hon'ble Central Administrative Tribunal.

The applicant declares that she has availed of all the remedies available to her under the relevant service rules, etc.

(Give here chronologically the details of representations made and the outcome of such representations with reference to the contents of Annexure to be given in support thereof).

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

The applicant further declares that she had not previously filed any application, writ-petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ-petition or suit is pending before any of them.

8. Relief's sought :

In view of the facts mentioned in para 6 above the applicant prays for the following relief (s) :

The applicant prays that the impugned order imposing a penalty of 25% cut in the monthly pension be set aside and the pension and other benefits restored in full.

9. Interim order, if any, prayed for :

Pending final decision on the application, the applicant seeks the following interim relief :

(i) The applicant may be allowed to draw her pension in full during the pendency of this application.

(ii) The Respondent may be directed to release the applicant's gratuity.

10. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed Post-card or Inland Letter, at which intimation regarding the date of hearing could be sent to him.

Yes

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**11. Particulars of Bank Draft/ Postal Order filed in respect of the application fee :**

A/C payee draft No. "282357" dated 13.03.2007 drawn on Vijaya Bank, Guwahati Branch.

**12. List of enclosures :**

1. Copy of impugned order No. C.14011/39/2001-Ad.V/1330 dated 21.3.2006
2. Copy of Charge Sheet Memorandum No.C-14011/39/2001-Ad.V - 4078-84 dated 13.12.2001 issued to the Applicant
3. Copy of the Order appointing the Inquiry Officer
4. Copy of the Defence Brief submitted before the Inquiry Officer
5. Copy of the Report of the Inquiry Officer
6. Copy of the Show Cause Notice No. C.14011/39/2001 Ad.V dated 29.1.2004 by Disciplinary Authority seeking to disagree with findings of Inquiry Officer
7. Copy of the reply dated 5.6.2004 to Show Cause Notice
8. Copy of the letter No.F.3/268/2005-SI dated 17.1.2006 by the Union Public Service Commission
9. Self-addressed envelop as required.
10. A/C payee daft for Rs.50/= payable in Guwahati.

### VERIFICATION

I Smt. L.R.Mithran (Name of the applicant) d/o Late Pu K.T.Khuma IFAS, age 65 years retired Commissioner Customs and Central Excise , residing in Nongrim Hills, Shillong, do hereby verify that the contents of paras 1, 4 to 12 are true to my personal knowledge and paras 2 to 3 believed to be true on legal advice and that I have not suppressed any material fact.

Date :

7<sup>th</sup> March 07

Place :

Bussahote.



Signature of the applicant.

New Delhi, the 21st March, 2006

ORDER  
(No. 10/2006)

WHEREAS disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965, against Smt. L.R. Mithran, Commissioner of Customs and Central Excise, were initiated vide Memorandum of even number dated 13.12.2001. As Smt. L.R. Mithran (hereinafter also referred to as the C.O.) has retired from Government service on superannuation on 31.7.2002, the disciplinary proceedings initiated against her vide charge Memo dated 13.12.2001 are deemed to be proceedings under Rule 9 of the CCS (Pension) Rules, 1972.

2. AND WHEREAS charges leveled against her vide said charge Memo, in brief, are :

2.1 ARTICLE OF CHARGE - I

Smt. L.R. Mithran, while functioning as Commissioner, Central Excise, Shillong, failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant inasmuch as she, during the year 1996/97 obtained employment for her son Shri A.R. Mithran with M/s. Kitply Industries Ltd. Kolkata with whom she had official dealings, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of CCS (Conduct) Rules, 1964.

2.2 ARTICLE OF CHARGE - II

Smt. L.R. Mithran, while acting as Commissioner, Central Excise, Shillong during the year 1996/1997 failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant inasmuch as she, accepted donation/gift by way of Bank Draft including Tata Mobile vehicle bearing Regd. No. ML-05-2648 given to Zami Memorial Cheritable Trust created by her in the name of her late mother, which were paid by M/s. Warren Tea Ltd., a sister concern of M/s. Kit Ply Industries with whom she had official dealings and thereby contravened Rule 3(1)(i) and (iii) of the CCS (Conduct) Rules, 1964.

2.3 ARTICLE OF CHARGE - III

Smt. L.R. Mithran, while acting as Commissioner, Central Excise, Shillong during the year 1996/1997 failed to maintain absolute integrity inasmuch as she obtained a sum of Rs. 1 lakh in the name of Zami Memorial Trust from unknown and dubious source through bank draft without obtaining prior permission from the competent authority and thereby contravened rule 18(3) and 3(1) of CCS (Conduct) Rules, 1964.

3. AND WHEREAS the aforesaid articles of charge were duly supported by detailed statement of imputations

4. AND WHEREAS on denial of charges, an open inquiry was conducted. In his report dated 28.8.2002, the Inquiry Officer held all the three Articles of Charge against the charged officer as 'not proved'. The Inquiry Report was examined carefully. The findings of the IO in the Inquiry Report vis-à-vis charges levelled against Smt. Mithran were analyzed and it was found that the following aspects appear to have been overlooked by the IO in the case.

i) As regards Article-1 of the charge, the IO had concluded that the charge is based on an inference and there is no direct evidence to show that the C.O. had any role to play in temporary engagement of her son with M/s. Kitply Industries. The said findings of the IO do not appear to be in conformity with provisions of Rule 4(2)(ii) which says, "A Govt. servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any company or firm, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that company or firm". Therefore, it was incumbent upon Smt. Mithran to intimate to the Department about employment of her son with M/s. Kitply Industries Ltd. Kolkata with whom she had official dealings, which she failed to do so. It is immaterial whether the employment was temporary or permanent as the Rule 4 ibid does not make any difference in permanent and temporary employment. She has also not intimated to the Department that her son was independent since he attained majority as required under Rule 15(3) of CCS(Conduct) Rules, 1964. Hence, findings of the IO in respect; of Article-1 of the charge were not found tenable.

ii). As regards Articles II and III of the charge, the IO had held that evidence is necessary which can confirm either the CO's demand and/or acceptance or the knowledge/awareness of the above donations in addition to the point as to who was the beneficiary ultimately. It is observed that the findings of the IO appears to be deficient because lapses on the part of Smt. Mithran on this account vis-a-vis conduct rules involved have not been analyzed by the IO. It is a fact that the Trust was created by her during the pendency of the adjudication proceedings. She was one of the main promoters of the Trust and she herself had deposited the registration fees, which indicate that she has been actively associated with the activities of the Trust. Therefore, donation/gift given to the Trust were well within her knowledge. Moreover, she has not intimated to the Department about forming of a charitable Trust as required under Rule 15(2)(d) of the CCS(Conduct) Rules, 1964. Therefore, it appears that she has concealed from the Department her participation in the activities of the Trust which inter-alia included accepting donations/gifts by way of bank drafts including Tata Mobile vehicle given to Zami Memorial Trust which were paid by M/s Warren Tea Ltd., a sister concern of M/s KIL, with whom she had official dealings. This act of her concealment goes to prove her failure to maintain absolute integrity and her indulging in acts of unbecoming of a Govt. servant. Thus, findings of IO in respect of Articles II and III of the charge were also not found tenable.

5. AND WHEREAS the matter was referred to the CVC with the views on the I.O's report as in the preceding para, for 2<sup>nd</sup> stage advice. The CVC, in agreement with the

views of the Department, advised imposition of suitable cut in pension of Smt. L.R. Mithran, Commissioner (Retd.), as per their O.M. dated 19.12.2003. Accordingly, in terms of Rule 15(2) of the CCS (CCA) Rules, 1965, a Show Cause Notice indicating tentative reasons for disagreement was issued to Smt. L.R. Mithran, Commissioner (Retd) calling upon her to show as to why the said findings of the Inquiry Officer should not be disagreed with and a penalty of suitable cut in pension in her monthly pension be not imposed on her. A copy of Inquiry Report as well as CVC's advice was also given to her alongwith the said Show Cause Notice.

6. AND WHEREAS Smt. L. Mithran, submitted her reply/representation vide letter dated 5.6.2004. The reply of Smt. Mithran has been examined. It is felt that even though there does not appear to be any direct evidence to prove that Smt. L. R. Mithran was aware of here son's employment in M/s Kitply, the probability of her knowing the same are quite high. There is every chance that the C.O may have been aware of her son's employment in M/s Kitply with whom she had official dealing in the past. The CO's contention at para 8(b) that " There is no requirement under the CCS(Conduct) Rules to inform the Department as and when an employee's child attains majority and becomes independent" is not acceptable. It was incumbent upon Smt. Mithran to intimate to the Department about the employment of her son with M/s Kitply Ind. Ltd., Kolkata with whom she had official dealing which she failed to do so. All the charges are based on the main allegation that Ms. L.R. Mithran showed undue favour to M/s Kitply Ind. Ltd. Kolkata by way of passing an adjudication order wherein she sliced down the evaded Central Excise duty from 35.79 crores to 9.14 crores. Thus Article of Charge-I is proved.

7. AND WHEREAS it is a fact that M/s Zami Mobile Charitable Trust was created by Smt. L.R. Mithran as there is no doubt or dispute about the fact that the said Smt. L.R. Mithran paid Rs. 250/- as registration fee for the trust or that she was a Trustee of the said trust. It indicates that she had been actively associated with the activities of the Trust. Therefore, donation/gifts given to the Trust were well within her knowledge and her contention that she was not aware of any such donation or gift received by the said Trust is not tenable. She has failed in intimating the Department about the formation of the Trust as soon as she paid the registration fee for the said Trust or on receiving the intimation of registration from the State Govt. authorities as required under Rule 15(2) (d) of CCS (Conduct) Rules, 1964. Therefore, she has concealed her participation in the activities of the Trust which interalia includes accepting donation/gifts by way of bank drafts including a Tata Mobile Vehicle given to Zami Memorial Trust which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kitply Industries Ltd., Kolkata with whom she had official dealing. This act of her concealment goes to prove her failure to maintain absolute integrity and indulging in acts of unbecoming of a Govt. servant. Thus the charges under Article II and III also stands proved.

8. AND WHEREAS in the light of the above, the CO's contention that she is not guilty of any misconduct, and the I.O.'s findings should not be disagreed with on frivolous grounds unsubstantiated by any evidence is not tenable as there are enough reasons and circumstantial evidences to prove that she was aware of the positions mentioned at para 5 and 6 above.



9. AND WHEREAS the Disciplinary Authority, after taking consideration the C.O's submissions on the Show Cause Notice for disagreeing with the Inquiry Report, arrived at a provisional conclusion that the ends of justice would be met if a penalty of withholding of 25% of the monthly pension otherwise admissible for a period of ten years is imposed on Smt. L.R. Mithran, Commissioner (Retd.), subject to the concurrence of the UPSC.

10. AND WHEREAS the case records were forwarded to the UPSC (hereinafter called as the 'Commission') for their advice. After perusal of the case records, the Commission has furnished their advice vide their letter dated 17.1.2006. The Commission has observed that -

- (i) Vide DA's Order dated 13.3.2002, Shri Krishna Kant, the then Addl. Director General of Central Excise Intelligence, New Delhi, was appointed as the Inquiring Authority to inquire into the Charges framed against the CO. On 28.8.2002, the IO submitted his Inquiry report with the conclusion that the allegation contained in the Statement of Imputations of misconduct contained in the Charge-sheet have not been established as the Charges viz. Art. I, Art.II and Art.III, as contained in the Memorandum dated 13.12.2001 are not proved against the CO.
- (ii) The D.A. disagreed with the findings of the IO and held all the three Articles of charge as proved giving the reasons as contained in their Show -Cause Notice dated 29.1.2004.
- (iii) Out of the Articles of Charge as per the Charge sheet against the CO, the basic allegation against the Charged Officer is that she showed undue favour to M/s Kitply Ind. Ltd., Kolkata, while adjudicating a show-cause notice for the alleged evasion of duty to the tune of Rs. 35, 79,07,804/-. It has been alleged specifically that she passed the adjudication order slicing down the evaded payment of Rs. 35, 79,07,804/- to Rs. 9,14,40,448/- for a consideration and she obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Ltd. with whom she had official dealings, without prior permission of the competent authority.
- (iv) Upon adjudication of the case of duty evasion by M/s. Kitply Industries Ltd., which was detected by the officers of Directorate General of Anti-evasion, Kolkata in 1994, the CO passed the Order on 5.12.1996, slicing down the Central Excise duty from Rs. 35,79,07,804/- to Rs. 8,13, 40,448 [comprising of Rs. 7,05,95,368 on account of non-inclusion of advertisement cost incurred by M/s. Landle in the assessable value, Rs. 48,48,500/- on account of non-inclusion of interest accrued on the deposit of Rs. 2 crores made by M/s. Landle to M/s. Kitply Industries Ltd. and Rs. 58,96,580 on account substitution of grade in the seven Depots as indicated in the said Order]. Thereafter, Hon'ble Customs, Excise and Gold (Control) Appellate Tribunal [CEGAT] Eastern Bench, Kolkata vide their Order dated 15.6.99 sliced down the amount of Rs. 8,13,40,448/- (as per the CO's adjudication order) to a much smaller amount of Rs. 58,96,580/- plus penalties of Rs.10,00,000/-. This shows that CEGAT confirmed one demand, amounting to Rs. 58,96,580/- of the CO's adjudication order whereas set

aside other two demands totaling to Rs. 7,54,43,868/- as well as the penalty of Rs. 1,00,000/- as imposed on Shri P.K. Goenka as per the CO's order dated 5.12.1996. Further, as per the case records, while accepting the CEGAT's order, the Hon'ble Supreme Court dismissed the Civil appeal filed by the Department against the said CEGAT's order. Here, it is to be pointed out that it is not obligatory for an adjudicating authority to confirm the same amount as has been demanded in the Show cause notice. Otherwise, it will amount to say that the adjudicating authority has no option but to confirm each and every Show cause notice which sounds nothing but absurd. So, if an adjudication authority has reduced the amount as demanded in the Show cause notice, it cannot be considered/treated as loss to the Government. Therefore, considering the whole sequence of events as brought out hitherto, it is not proved that the CO while passing the adjudication order dated 5.12.1996 had committed any illegality or acted with any malafide motive to show any undue favour to the said firm. As such, the Commission are of the view that the findings of the IO with regard to this main Charge are in order, i.e. this Charge is not proved against the CO.

- (v) The other part of this Charge is regarding employment of the CO's son with M/s. Kitply Industries, with whom the CO had official dealings without obtaining prior permission of the competent authority in contravention of Rule 4 of the CCS(Conduct) Rules, 1964.
- (vi) The Commission have observed further from the case records, the adjudication order in the case was passed by the CO on 5.12.96 whereas the temporary assignment for which the CO's son was engaged started much later in July, 1997. Thus, it appears that there is no immediate connectivity between the event of CO's passing the adjudication order and offer of acceptance of the casual engagement by her son. In this regard, the CO has pleaded that she has established beyond a reasonable doubt by producing abundant evidence in the shape of documentary as well as depositions of defence witnesses as detailed in Para 5 of her letter dated 5.6.2004 that her son never made her aware of his assignment with M/s. Kitply. She emphasized that as she was not aware of his employment with the said firm, it could not have been possible for her to intimate about such employment to the prescribed authority. In the face of the abundant evidence on record and also the findings of the IO, she maintains that she was not aware of such employment and as such she could not have informed the department. However, during the course of examination of Shri A.R. Mithran, son of the CO, it has been clearly brought on record that during the period when Shri A.R. Mithran got assignment/employment with M/s. Kitply Industries Ltd. he was staying with his mother i.e. the CO. further, as seen from the cross-examination, the said offer was received from M/s Kitply Industries Ltd. through post. It is also a matter of record that Shri A.R. Mithran, was looking for some job for quite sometime and he got offer from a person with whom her mother i.e. the CO was having official business who, being territorial Commissioner of Central Excise having jurisdiction over manufacturing unit of M/s. Kitply Industries Ltd., had brought down a huge chunk of demand against them. The circumstances suggest that the CO cannot be totally unaware of the assignment

given to her son by M/s. Kitply Industries Ltd. since her son Shri A.R. Mithran was staying unemployed with her. Therefore, the Commission is of the view that the allegation that she failed to obtain prior permission from the Government in securing employment with the persons with whom she had official dealings stands proved.

- (vii) According to remaining two Articles of charge, the CO accepted donation/gifts by way of bank drafts including a Tata Mobile Vehicle given to Zami Memorial Charitable trust created by her in the name of her late mother which were paid by M/s. Warren Tea Ltd., a sister concern of M/s. Kitply with whom she had official dealings. To this, the Charged Officer, in her defence, presented as many as 14 affidavits, duly sworn in before the Judicial Magistrate that she did not deal with the day to day affairs of the Zami Memorial Charitable Trust and had no knowledge about any donation, whether in cash or in kind to this trust.

11. AND WHEREAS the Commission has further observed that the available case records in this regard show that the Charged Officer was a founder member of the Trust as she had herself deposited the Registration fee and was also a founder member of Governing body of the Zami Memorial Trust which was created in the name of her late mother. It has also not been disputed that donations amounting to Rs. 5 lakhs and 1 lakh respectively had been received by the Trust in addition to a Tata Mobile Vehicle which was gifted to the Trust by a sister concern of M/s. Kitply. Rule 15(2)(d) of CCS (Conduct) Rules, 1964, clearly states that a Government servant may without previous sanction of the govt. take part in registration, promotion or management (not involving the holding of an elective office) of a literary, scientific or charitable society..... Provided that in a case falling under Clause (d)..... His official duty shall not suffer thereby and "he shall within a period of one month of his taking part in such activity, report to the Govt. giving details of the nature of his participation." Considering all these facts, there is no escape from the conclusion that the CO had an important role to play in the Zami Trust which received a vehicle and a sum of Rs.1 lakh in the name of the Trust from a Tea Company as well as from unknown sources. It is also not credible that she had no knowledge of all such events. Therefore, the Disciplinary Authority has rightly stated that the CO appears to have concealed from the Department her participation in the activities of the Trust. Hence, the allegations made under Article II and III stand substantiated against the CO.

12. AND WHEREAS taking all facts and circumstances of the case in their totality, the Commission came to the conclusion that although it is not conclusively proved that while passing the adjudication order dated 5.12.96 on Show-cause Notice dated 28.2.95 issued by the Commissioner, Central Excise, Shillong to M/s. Kitply Industries Ltd., slicing down the Central Excise Duty to Rs. 8,13,40,448/- to be paid by M/s. Kitply Industries Ltd., had committed any illegality or acted with malafide motive to show any undue favour to the said firm, the Articles I, II and III of the Charge stand proved to the extent as discussed in para 9 and 10 above. Further, considering that the CO, being a Commissioner of Central Excise, was a very senior officer, the gross misconduct committed by her in view of the Articles of Charge as stand proved becomes very grave.

13. AND WHEREAS in the light of their observations and findings and after taking into account all other aspects relevant to the case, the Commission observed that the charges established against the Charged Officer, constitute grave misconduct on her part and advised that the ends of justice would be met in this case if the penalty of withholding of 25% of the monthly pension otherwise admissible to Smt. L.R. Mithran is imposed on her for a period of ten years and further the gratuity admissible to her should be released if not required otherwise.

14. AND WHEREAS the advice of the UPSC has been considered very carefully. The advice being well reasoned, just, fair and in conformity with the provisional conclusion of the Disciplinary Authority, has been accepted. A copy of UPSC's advice is enclosed. The Disciplinary Authority, therefore, has come to the conclusion that a penalty of 25% cut in monthly pension otherwise admissible to Smt. L.R. Mithran for a period of ten years should be imposed on her.

15. NOW, THEREFORE, the President of India being the Disciplinary Authority hereby orders to impose a penalty of 25% cut in monthly pension otherwise admissible to Smt. L.R. Mithran on her for a period of ten years and to release the gratuity admissible to her.

(By Order and in the name of the President)

  
(S.P. Roy)

Under Secretary to the Govt of India

Encl; Copy of UPSC's advice.

To

✓ Smt. L.R. Mithran,  
Commissioner, Customs and Central Excise (Retd.),  
(Through: The Chief Commissioner of Central Excise & Customs, Shillong)

# COMPILATION II

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Noted  
True copy

19-3-07

(R. K. Sarkar)  
Superintendent (Tech-I)  
Central Excise & Ghv. Division

F.No.C-14011/39/2001-AdV --  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
\*\*\*\*\*

4078-84

A-2.

New Delhi, dated the 13<sup>th</sup> December, 2001.

MEMORANDUM

The President proposes to hold an inquiry against Smt. L.R. Mithran, Commissioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965. The substances 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 articles of charge (Annexure I). A statement of the imputations 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 & IV).

2. Smt. L.R. Mithran is directed to submit within 10 days of the receipt of this Memorandum written statement of his defence and also to state whether she desires to be heard in person.
3. She is informed that an inquiry will be held only in respect of those articles of charges as are not admitted. She should, therefore, specifically admit or deny each article of charge.
4. Smt. L.R. Mithran is further informed that if she does not submit her 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 CC (CCA) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against her *ex parte*.
5. Attention of Smt. L.R. Mithran is invited to Rule 20 of the Central Civil Services (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 her interest in respect of matters pertaining to her service.

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

6. The receipt of the Memorandum may be acknowledged.

(By order and in the name of the President)



(V.P. Arora)

Under Secretary to the Govt. of India

✓ To

Smt. L.R. Mithran.

Commissioner

(Through: Shri A.K. Chhabra, Chief Commissioner of Central  
Excise, Mello Compound, Shillong.)

Encl: As above along with copies  
of relied upon documents as  
per Annexure - III.

ANNEXURE - I

ARTICLE OF CHARGE FRAMED AGAINST MRS. L.R. MITHRAN, THE  
THEN COMMISSIONER, CENTRAL EXCISE, SHILLONG.

**ARTICLE OF CHARGE NO.1.**

Where as Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she, during the year 1996/97 obtained employment for her son Shri A.R.Mithran with M/s Kit Ply Industries Ltd., Calcutta with whom she had official dealing, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of C.C.S. Conduct Rule 1964.

**ARTICLE OF CHARGE NO.2.**

Where as said Mrs. L.R.Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996/97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she, accepted donation/gift by way of Bank draft, including Tata Mobile vehicle bearing Regd. No. ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kit Ply Industries with whom she had official dealings and thereby contravened rule 3 (i) and (iii) of C.C.S. Conduct Rule 1964.

**ARTICLE OF CHARGE NO.3.**

Where as said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtained a sum of Rs. 1 Lakh in the name of Zami Memorial Trust(ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority and thereby contravened rule 18(3) and 3 (1) of C.C.S. Conduct Rule 1964.

ANNEXURE - II

STATEMENT OF IMPUTATION IN SUPPORT OF ARTICLE OF CHARGE  
FRAMED AGAINST MRS. L.R. MITHRAN, THE THEN COMMISSIONER,  
CENTRAL EXCISE, SHILLONG.

That Mrs. L.R. Mithran, IRS, alias P. Lalpari was posted and functioning as Commissioner, Central Excise, Shillong during the period year 1996/97. In the year 1996 said Mrs. L. Mithran obtained valuable thing without consideration from Sh. S.P. Goenka, Chairman M/s Kit Ply Industries Ltd. and Advisor to the Board of Directors M/s Warren Tea Ltd., during adjudication proceeding of M/s Kit Ply Industries Ltd. Calcutta and thereby committed departmental misconduct. The detail facts are as under:

Mrs. L.R. Mithran, IRS adjudicated the Excise Evasion Duty case of M/s Kit Ply Industries Ltd., Calcutta in the year 1996 which was detected in 1994 by the official(s) of the Directorate General, Anti Evasion (DGAE), Calcutta, and the same was forwarded to the Shillong Commissionerate as the factory premises of the said firm falls within the jurisdiction of Shillong.

2. During the pendency of the adjudication proceedings Mrs. L.R. Mithran, IRS established Zami Memorial Charitable Trust on 12.10.1996 in the name of her Late Mother (Zami) and obtained certificate of registration bearing No. SI/2MCT-730/96 of 1996 dtd. 27.11.96 from the Registrar of Societies, Govt. of Meghalaya, Shillong.

3. As per the Memorandum of association of the above Trust, all direct descendants of P. Zami shall be trustees and her father P.U.K. Khuma shall be the Chief Patron of the Trust for life. As such Mrs. L.R. Mithran, IRS alias P. Lalpari was one of the main trustee and also represented other trustees of Zami Memorial Charitable Trust.

4. Sh. Shanti Prasad Goenka alias S.P. Goenka was/is the Chairman of M/s Kit Ply Industries Ltd., Calcutta and Advisor to the Board of the Directors of M/s Warren Tea Ltd., Calcutta, the two companies being controlled by S/Sh. P.K. Goenka and V.K. Goenka sons of Sh. S.P. Goenka.

5. On 17.9.96 Sh. S.P. Goenka in the capacity of Chairman, M/s Kit Ply Industries Ltd. attended the preliminary enquiry along with other officials of the company at Shillong which was heard by Mrs. L.R. Mithran, IRS, Commissioner, Central Excise, Shillong.

6. Sh. S.P. Goenka, Chairman, M/s Kit Ply Industries Ltd. and Advisor to the Board of the Directors of M/s Warren Tea Ltd. and during pendency of the adjudication proceedings gifted one Tata Mobile Vehicle having registration No. ML-05-B- 2648 to aforesaid Zami Memorial Charitable Trust, Shillong through Himmat Singka Auto Enterprises Ltd., Guwahati which was purchased vide money receipt No. 2514 dtd. 9.11.96. The cost of the above vehicle was paid to HAE by way of DD No.177156 dtd. 7.11.96 for Rs. 3,01,955/-

7. Said Mrs. L.R. Mithran, IRS passed the final adjudication order No. 31/COMMOR/CH/44/96 dtd. 5.12.96 in the above case slicing down the evaded amount of duty from Rs. 35,79,07,804/- to Rs. 9,14,40,448/- In favour of M/s Kit Ply Industries Ltd., Calcutta

8. After passing the aforementioned final order dtd. 5.12.96, Sh. S.P. Goenka, Chairman of M/s Kit Ply Industries Ltd. and Advisor to the Board of Directors of M/s Warren Tea Ltd. directed Sh. P.K. Bose, Managing Director, M/s Warren Tea Ltd, vide Note dtd. 20.12.96 to purchase one DD Draft for Rs. 5 Lakhs in favour of Zami Memorial Charitable Trust, Shillong. Accordingly Demand Draft No. 483425 dtd. 23.12.96 for Rs. 5 Lakhs was obtained by debiting the account of Warren Tea Ltd. maintained with State Bank of India, Commercial Branch, Calcutta and subsequently sent to the said Trust. This Demand Draft of Rs. 5 Lakhs was deposited on 3.1.97 in A/c No. 10308 of Zami Memorial Charitable Trust, maintained with Vijaya Bank, Saltumukhrah Branch, Shillong and credited in the said account on 4.1.97.

9. Mrs. L.R. Mithran, IRS received a sum of Rs. 1 Lac in the name Zami Memorial Charitable Trust through Demand Draft No. 535617 dtd. 22.5.97, issued by United Bank of India, G.S. Road Branch, Guwahati from dubious source, which she claimed to have received as donation, but without prior permission of or intimation to the Department.

Mrs. L.R. Mithran, IRS, has obtained employment for her son Sh. A.R. Mithran and accommodation at Tura, Meghalaya from M/s Kit Ply Industries Ltd. with whom she had official dealings during the year 1997.

The aforesaid act of Mrs. L.R. Mithran, IRS constitute departmental misconduct in contravention of Rule 3 (1), rule 4 and 18(3) of C.C.S. (Conduct) Rules, 1964.

LIST OF DOCUMENTS

1. ✓ RR dtd. 12.3.98 showing Registration of PE. (P. 269)
2. ✓ FIR dtd. 7.1.99 (P. 267)
3. ✓ Show cause notice No. V-CH/44/6/ADJ/95 dtd. 28.2.96 (P. 234)
4. ✓ Order dt. 17.9.96 passed by Mrs. L.R. Mithran, IR: the then Commissioner, Central Excise, Shillong. (P. 205)
5. ✓ Adjudication order no. 31/ Commor/CH/44. H/96 dt. 5.12.96 o Mrs. L.R. Mithran etc. (P. 162)
6. ✓ Memorandum of the Association club for Registration of Zami Memoria. Charitable Trust (ZMCT) etc. (P. 208)
7. ✓ Treasury challan dtd. 26.11.96 showing deposit for Rs 250/- by Mr L.R. Mithran for Registration of ZMCT.
8. ✓ Memorandum of Association of ZMCT, Shillong. (P. 214)
9. ✓ Rules and Regulations of ZMCT, 1996. (P. 215)
10. ✓ Certificate of Registration No. SR/ZMCT-730/96 of 1996 dtd. 27.11.96 issued by Registrar of Societies, Govt. of Meghalaya, Shillong. (P. 210)
11. ✓ Letter No. KIT/Cal/96/6549 dtd. 10.12.96 of KIL addressed to ZMC Shillong. (P. 212)
12. ✓ Letter No. KIT/Cal/96 dtd. 1.11.96 of KIL addressed to Himmat Singka Enterprises (HAE), Calcutta etc. (P. 213)
13. ✓ Inter Office memo dtd. 7.11.96 of HAE, Calcutta to their Guwahati Office etc. (P. 129)
14. ✓ DD No. 177156 dtd. 7.11.96 for Rs. 3,01,95/- (P. 215)
15. ✓ Bill No. TEZ/249/96-97 dtd. 8.11.96 of HAE, Guwahati (P. 121) (P. 213)
16. ✓ Voucher No. 2514 dtd. 9.11.96 of HAE, Guwahati (P. 122)
17. ✓ Cheque No. 770116 dtd. 1.11.96 for Rs. 3,01,95/- (P. 159)
18. ✓ Letter No. WTL/ACCT/S-13 dtd. 21.12.96 issued by Warren Tea Ltd. to Commercial Branch, Calcutta. (P. 117) & (P. 158)
19. ✓ Certified copy of ledger sheet of A/c No. 2150 of Warren Tea Ltd., Calcutta. (P. 160)
20. ✓ DD No. 483425 dtd. 23.12.96 for Rs. 5,00,00/- issued by SBI Commercial Branch, Calcutta. (P. 127)

21. ✓ Letter dtd. 8.4.2000 of Sh. R.A.Shah, the then Manager, HAE, Calcutta. (P. 128)
22. ✓ Payment voucher No. S/1912 dtd. 1.11.96 of Warren Tea Ltd., Calcutta. 20
23. ✓ Letter dtd. 20.12.96 on Memo pad of Kit Ply issued under the signature of Sh.S.P.Goenka etc. (P. 119)
24. ✓ Letter No. WTL/ACCT/D-3 dtd. 20.12.96 of Warren Tea Ltd. addressed to ZMCT, Shillong. (P. 118)
25. ✓ Payment voucher No. S/2337 dtd. 23.12.96 of Warren Tea Ltd., Calcutta. (P. 116)
26. ✓ Memorandum dtd. 23.12.96 of SBI Commercial Branch, Calcutta. (P. 115)
27. ✓ Letter No. WTL/ACCT/D-3 dtd. 14.8.97 of Warren Tea Ltd. addressed to ZMCT, Shillong. (P. 114)
28. ✓ Letter No. WTL/ACCT/D-3 dtd. 28.12.98 of Warren Tea Ltd. addressed to ZMCT, Shillong. (P. 113)
29. ✓ Account of opening form of A/c No. 10308 of ZMCT, Shillong. (P. 284)
30. ✓ Statement of A/c of ZMCT maintained with Vijaya Bank, Laitumukhrah Branch, Shillong. (P. 283)
31. ✓ Pay-in-slip dtd. 3.1.97 relating to A/c 10308 of ZMCT, Shillong. (P. 286)
32. ✓ Letter No. V-563/6/67 dtd. 12.5.98 of Sh. B.Basu, Additional Commissioner (Vig.) O/o the DG(Vig), Customs and Central Excise, New Delhi. (P. 133)
33. ✓ Letter No. Nil dtd. 27.4.2000 of Sh.S.K.Ghosh, General (Fin), Warren Tea Ltd., Calcutta. (P. 125)
34. ✓ Extracts of printed accounts books of Warren Tea Ltd. for the year 1996-97, 97-98 and 98-99 etc. (P. 290)
35. ✓ Search list dtd. 9.4.99. (P. 144)
36. ✓ Seizure memo dtd. 15.6.99. (P. 134) (P. 145)
37. ✓ Letter No. SR-1/97/1106 dtd. 9.6.99. (P. 135) (P. 146)
38. ✓ Seizure memo dtd. 5.8.99. (P. 136) (P. 147)
39. ✓ Seizure memo dtd. 5.8.99. (P. 137) (P. 148)
40. ✓ Seizure memo dtd. 28.4.2000. (P. 138) (140)
41. ✓ Production memo dtd. 8.4.2000. (P. 139) (151)

42. ✓ Production memo dtd. 8.4.2000. (P-140) (P.152)
43. ✓ Production Memo dtd. 7.4.2000. (P.141) (P.153) (P.271)
44. ✓ Letter No. KIL/Cal dtd. 7.4.2000.
45. ✓ Certified copy of R.O.C. return for the year 1996-97 (P.130)
46. ✓ Letter dtd. 16.5.2000 of Manager, UBI, GS Rd. Branch, Guwahati. (P.155) (P.272)
47. ✓ DD application dtd. Nil of UBI, GS Rd Branch, Gowahati.
48. ✓ Production memo dtd. 25.4.2000. (P.274) (P.150)
49. ✓ Seizure memo dtd. 25.5.2000. (P.142) (P.154)
50. ✓ Letter No. SHI/MISC/CBI/DD/1/2000 dtd. 15.5.2000 of Manager, UBI, Shillong Branch, Shillong. (P.283)
51. ✓ Sale certificates dtd. 11.11.96 issued by Himmat Singka Auto Enterprises etc. (P.123) (P.211)
52. ✓ Bill No. TEZ/249/96-97 dtd. 8.11.96. (P.121) (P.213)
53. ✓ Photocopy of registration certificate of Vehicle No. ML-05B-248. (P.227)
54. ✓ Money account dtd. 1.12.98 under the signature of M. I. R. Mithran, Commissioner. (P.216)
55. ✓ I.T. assesment order dtd. 14.3.2000 of Sh. A. Mukherjee, Jr. Commissioner, Spl. Range, Income Tax, Calcutta. (P.222)
56. ✓ Copy of letter No. KIT/CAL/APP/97-98 dtd. 25<sup>th</sup> July, 1997. (P.185)
57. ✓ Deposit slip dtd. 24.5.97. (P.276)
58. ✓ Certified copy of fax 1.11.96 addressed to Sh. P. K. Bose of Warren Tea Ltd. (P.278) (P.220)
59. ✓ Inter Office memo dtd. 6.11.96 of Himmat Singka Auto Enterprises, Guwahati to their Amingaon office showing receipt of payment etc. (P.131)
60. ✓ Authority Slip dtd. 6.11.96 of Hit Ply Industries Ltd. to Lami Memorial Charitable Trust, Shillong etc. (P.132)
61. ✓ Letter No. WTL/Acct/D-3 dtd. April 12, 2000 of Sh. S. Sen, Manager (Accts.) Warren Tea Ltd. addressed to Sh. Anil Banka, Director Kit Ply Industries Ltd. etc. (P.124)

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62. ✓ Seizure dtd. 24.8.2000. (P. 143)

63. ✓ Extracts of House Rent Account Register showing letting out of premises at Tura. (P. 264)

64. ✓ Letter dtd. 6.9.97 addressed to S.D.O., Electrical, Tura. (P. 219) (P. 279)

65. ✓ Printed Receipt No. 171872 dtd. 25.5.98 issued by Meghalaya State Electricity Board, Tura, etc. (P. 218) (P. 277)

66. ✓ Electricity Bill dtd. 15.5.98 issued to Mr. A.R. Mithran etc. (P. 217)

67. ✓ Seizure Memo dtd. 14.6.2001. (P. 221)

68. ✓ Enquiry Report 8.12.97 of Sh. N. Kar, Asstt. Commissioner (Vig.) etc.

69. ✓ Corrigendum (P. 280) dt. 2/2/97 (P. 161)

70. ✓ Fixed deposit dt. 1/12/98 of ZMCT, Vijaya Bank (P. 289)

Missing documents -  
Sl No. 4,

6.

LIST OF WITNESSES

1. Shri Sukanta Das, Supdt., Central Excise, O/o the Commissioner of Central Excise, Shillong, Permanent Add : Lumpaning, New Colony, Shillong.
2. Sh. Amal Kanti Das, S/o (L) : Pulin Behari Das, Dy. Director, O/o Competent Authority, 20B, Abdul Hamid Street. : R/o : FD 469/2, Salt Lake, Calcutta-91.
3. Sh. Nirupam Kar, Asstt. Commissioner (Vigilance), Customs & Central Excise. 44, Park Street, 2<sup>nd</sup> floor, Calcutta-16.  
R/o : 73B, K.K. Mazumdar, Santoshpur, Calcutta-75.
4. Sh. A.Mukherjee, Joint Commissioner, Special Range-II, Income Tax Deptt., Cal.-I.
5. Shri Sanjay Sen, Manager (Accounts), Warren Tea Ltd., 31 Chowringhee, Cal.-16.  
PA : 11, Girish Ch. Bose Rd., Calcutta - 14.
6. Sh. Pravat Kr. Bose, Managing Director, Warren Tea Ltd., 31, Chowringhee, Cal.- 16.  
R/o : 55/3/E ; Ballygunj Circular Road, Calcutta- 19.
7. Sh. Subhojit Kr. Ghose, General Manager (Finance), Warren Tea Ltd., Calcutta-16. :  
R/o : 1A, Cooper Street, Calcutta-26.
8. Sh. Ram Avtar Shah, S/O Lt. Chiranjee Lal Shah, 40B, Princep Street, Calcutta-72.  
PA: Panchasheel Apartment, 493/B/1, G.T. Road(South), Sibpur, Howrah-2.
9. Sh.Swapan Kr. Roy, Manager, Himmatsingka, Auto Enterprises, Chhatribari, Guwahati.  
R/o : Bye Lane No. 7, Lachit Nagar, Guwahati -7.
10. Sh. Mohit Kumar Chakraborty, Head Assistant, O/o District Transport Officer, Shillong-1, Meghalaya.  
R/o : Beaver Road, Near Ward Lake, Shillong-1.
11. Sh. Dwijendra Kr. Thakuria, Manager, KIT Ply Industries Ltd., H.P.Brahmachari Road (Near Blue Hill Transport), Guwahati-8.  
R/o : Old Fire Brigade Lane, Chhatribari, Guwahati-8.
12. Sh.Haridasan Nair, S/o Lt. V.Padmabhan Nair, White House, 119, Park Street, Calcutta-16.  
R/o : Block D, Flat No.8, S.M.Nagar Housing Estate, PO : Sarkarpur (on Budge-Budge Route ) 24 Paragana (South), W.B.  
PA : Padmanathan Niwas, PO : Kollengode, Dist : Palghat, Kerala.
13. Sh.Bidhu Bhusan Khatua, S/o Lt. Girish Ch. Khatua, Employee of KIT Ply Industries Ltd., White House, 119, Park Street, Calcutta-16.  
R/o : 45/4/1 Thakur Pukhur Rd. Calcutta-63.  
PA : Vill & PO : Kankra, Distt. Mithrampur, W.B.
14. Sh.Sambhu Nath Jajodia, Director, Kit Ply Industries Ltd. White House, 119, Park Street, Calcutta-16  
R/o : 3<sup>rd</sup> Floor, Block-C, 137 Bangur Avenue, Calcutta -55.
15. Mr. Ricky G.Momin, S/o Mr. Rocky Feller, St. Mary's Road Aramile, Tura, Meghalaya.

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16. Mrs. L. Kharkongor, Registrar of Societies, Govt. of Meghalaya, Morrelo Building, Shillong-1.
17. Sh.P.Ramakrishna Rao, Manager, Vijaya Bank, Laitumkhrah Branch, Shillong.  
PA : Door No. 6907, Soujanya, 1<sup>st</sup> Floor, Near P&T Quarter, Shakaripura, Hassan  
573201, Karnataka.
18. Sh.Partha Roy Choudhury, Manager (Cash/Credit), State Bank of India, Commercial  
Branch, ARM Group House, 24 Park Street, Calcutta-16.  
R/o 19/3. Shahid Mangal Pandey Sarani, Barrackpore, 2<sup>nd</sup> Pargana (North), W.B.
19. Sh.Sunil Kr. Biswas, Chief Manager, State Bank of India, Commercial Branch, ARM  
Group House, Park Street, Calcutta-16.
20. Sh.Pipin Ch. Bordoloi, Assistant Manager, State Bank of India, Main Branch  
Panbazar, Guwahati.  
R/o C/o Smt. Phul Kumari Das, Ranu Kutir, Peoli Phukan Rd., Rehabari, Guwahati-1
21. Sh.B.K.Sharma, Assistant General Manager, State Bank of India, Shillong Branch.
22. Smt. Lalchangliani Sailo, Inspector, Central Excise, O/o the Commissioner of Central  
Excise, Morrelo Building Shillong.  
R/o Near Police Station, Band Stand, Madanriting, Shillong -21.
23. Sh. Debashish Ghosh, Sr. T.O.A., O/o the TDM, Telecom, Shillong.  
R/o Near Hotel Polo Towers, Shillong.
24. Sh. Somu Rajbangshi, Supervisor, O/o the Executive Director & C.V.S.O., NEEPCO,  
Brookland, Lower New Colony.
25. Sh.Arun Raha, C/o Shri Chakradhar Goswami, Bye Lane No. 7, Lachin Nagar  
Guwahati-7.
26. Sh.O.P.Prajapati, Accountant, Kit Ply Industries Ltd., H.P. Brahamachari Rd., Near  
Blue Hills Transport, Paltan Bazar, Guwahati-8.
27. Sh.Pawan Kr. Goenka, Managing Director, Kit Ply Ind. Ltd., address as at S.No. 19.
28. Sh.Anil Kr. Banka, Director Kit Ply Industries Ltd, White House, 119 Park Street  
Calcutta-16.  
R/o 62/7, Ballygunj Circular Rd. Calcutta -19.
29. Sh.Subroto Kr. Kanungo, Manager, United Bank of India, G. Rd. Branch, Ulubari,  
Guwahati-7.  
R/o : C/o Sh.Pradip Lahkar, Dr. B.K.Kakati Rd., Ulubari Guwahati-7.
30. Sh.Paresh Ch. Sharma, Dy. Manager, United Bank of India, G. Rd Branch, Ulubari,  
Guwahati-7.
31. Sh.Manoj Banerjee, SI, CBI, ACB, Guwahati.
32. Sh.K.R.Kabui, SI, CBI, ACB, Guwahati.
33. Sh. R.P.Bose, Inspector, CBI, ACB, Guwahati.

F.No.C-14011/39/2001-Ad.V. 97885  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, the 13<sup>th</sup> March, 2002..

ORDER

WHEREAS an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against Smt. L.R. Mithran, Commissioner.

AND WHEREAS the President considers that an Inquiring Authority should be appointed to inquire into the charges framed against the said Smt. L.R. Mithran, Commissioner.

NOW, THEREFORE, the President in exercise of the powers conferred by sub-rule (2) of the said rule, hereby appoints Shri Krishan Kant, Additional Director General, Directorate General of Central Excise Intelligence, New Delhi as the Inquiring Authority to inquire into the charges framed against the said Smt. L.R. Mithran.

(By order and in the name of the President)

Sd/-  
(V.P.Arora)  
Under Secretary to the Govt. of India

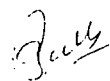
To

Shri Krishan Kant,  
Additional Director General,  
Directorate General of Central Excise Intelligence, New Delhi.

(Through: Director General of Central Excise Intelligence, New Delhi.)

53 @j  
Copy to:

1. Shri Dalbir Singh, Director General, Directorate General of Central Excise Intelligence, West Block VIII, Wing No. VI, R.K. Puram, New Delhi with the request that the enclosed order meant for Sh. Krishan Kant, Addl. Dir. General may be served on him and the dated acknowledgement obtained may be forwarded to this Department for record.
- ✓ 2. Smt. L.R. Mithran, Commissioner of Central Excise, (Through: Chief Commissioner of Central Excise & Customs, Kolkata)
3. Shri S.V. Singh, Additional Commissioner (Through : Chief Commissioner of Central Excise & Customs, Kolkata)
4. Shri A.K. Chhabra, Chief Commissioner of Central Excise & Customs, 15/1, Strand Road, Customs House, Kolkata with the request that the enclosed orders meant for Smt. L.R. Mithran, Commissioner and Shri S.V. Singh, Additional Commissioner may be served on them and the dated acknowledgement obtained.
5. Dy. Inspector General of Police, Central Bureau of Investigation, Guwahati. w.r.t. their letter No.0411/3/2(A)/99-SHG dated 27.2.2002.
6. Shri Rajendra Prakash, Additional Director General (Vigilance), Directorate General of Vigilance, C.R. Building, New Delhi w.r.t. their F.No.V-539/4/99.
7. Shri S.P.N. Singh, Director, Central Vigilance Commission, Satarkata Bhawan, GPO Complex, INA, New Delhi w.r.t. their File 000/CEX/074, for information.
8. Sanction Folder.
9. Guard File.

  
(V.P. Arora)  
Under Secretary to the Govt. of India

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A-4.

**BEFORE THE HON'BLE CHIEF COMMISSIONER (DZ)  
&  
INQUIRING AUTHORITY**

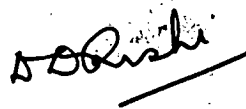
*Attested  
true copy*  
*19-3-07*  
*(R. K. Sarkar)*  
*Superintendent (Tech-I)*  
*Central Excise :: Ghy. Division*

In the matter of Memorandum No.C-14011 39 2001-Ad.V  
dated 13.12.2001 issued to Mrs. L.R. Mithran,  
the then Commissioner of Central Excise, Shillong

## **DEFENCE BRIEF**



**Mrs. L.R. MITHRAN**  
Commissioner of Central Excise (Retd.)  
Charged Officer



**Dr. D.D. RISHI**  
Additional Commissioner  
Central Excise & Customs  
AHMEDABAD-II.  
Defence Assistant

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Latchanglian Sailow, Inspector of  
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## CHAPTER - I

### Statement of Imputations and the Articles of Charge

The Statement of Imputations in support of the three Articles of Charge in the Charge Sheet reads as under:-

*"That Mrs. L.R. Mithran, IRS, alias PI Lalpari was posted and functioning as Commissioner, Central Excise, Shillong during the period year 1996/97. In the year 1996, said Mrs. L. Mithran obtained valuable thing without consideration from Shri S.P. Goenka, Chairman M/s. Kitply Industries Limited and Advisor to the Board of Directors M/s. Warren Tea Limited, during adjudication proceeding of M/s. Kitply Industries Limited, Kolkata and thereby committed departmental misconduct. The detailed facts are as under:-*

*Mrs. L.R. Mithran, IRS adjudicated the Excise Evasion Duty case of M/s. Kitply Industries Limited, Kolkata in the year 1996 which was detected in 1994 by the official (s) of the Directorate General, Anti Evasion (DGAE), Kolkata, and the same was forwarded to the Shillong Commissionerate as the factory premises of the said firm fall within the jurisdiction of Shillong.*

2. *During the pendency of the adjudication proceedings, Mrs. L.R. Mithran, IRS established Zami Memorial Charitable Trust on 12.10.1996 in the name of her Late Mother (Zami) and obtained certificate of registration bearing No.SR.ZMCT-730/96 of 1996 dated 27.11.1996 from the Registrar of Societies, Government of Meghalaya, Shillong.*

3. *As per the Memorandum of Association of the above Trust, all direct descendants of PI Zami shall be Trustees and her father P.U.K.T. Khuma shall be Chief Patron of the Trust for life. As such Mrs. L.R. Mithran, IRS alias PI Lalpari was one of the main Trustees of Zami Memorial Charitable Trust.*

4. *Shri Shanti Prasad Goenka alias S.P. Goenka was/is the Chairman of M/s.Kitply Industries Limited, Kolkata and Advisor to the Board of Directors of M/s.Warren Tea Limited, Kolkata, the two companies being controlled by S/shri P.K. Goenka and V.K. Goenka, sons of Shri S.P. Goenka.*

5. *On 17.09.1996, Shri S.P. Goenka in the capacity of Chairman, M/s. Kitply Industries Limited attended the preliminary inquiry along with other officials of the Company at Shillong which was heard by Mrs. L.R. Mithran, IRS, Commissioner, Central Excise, Shillong.*

6. Shri S.P. Goenka, Chairman, M/s. Kitply Industries Limited and Advisor to the Board of Directors of M/s. Warren Tea Limited and during pendency of the adjudication proceedings gifted one Tata Mobile vehicle having registration No. ML-05-B-2648 to the aforesaid Zami Memorial Charitable Trust, Shillong through Himmat Singka Auto Enterprises Limited, Guwahati which was purchased vide money receipt No. 2514 dated 09.11.1996. The cost of the above vehicle was paid to HAE by way of DD No. 177156 dated 07.11.1996 for Rs. 3,01,955/-.

7. Said Mrs. L.R. Mithran, IRS passed the final adjudication order No. 31/COMMOR/CH/44/96 dated 05.12.1996 in the above case slicing down the evaded amount of duty from Rs. 35,79,07,804/- to Rs. 9,14,40,448/- in favour of M/s. Kitply Industries Limited, Kolkata.

8. After passing the aforementioned final order dated 05.12.1996, Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited and Advisor to the Board of Directors of M/s. Warren Tea Limited, directed Shri P.K. Bose, Managing Director, M/s. Warren Tea Limited, vide Note dated 20.12.1996 to purchase one demand draft for Rs. 5 lakhs in favour of Zami Memorial Charitable Trust, Shillong. Accordingly demand draft No. 483425 dated 23.12.1996 for Rs. 5 lakhs was obtained by debiting the account of Warren Tea Limited maintained with State Bank of India, Commercial Branch, Kolkata and subsequently sent to the said Trust. This demand draft of Rs. 5 lakhs was deposited on 03.01.1997 in account No. 10308 of Zami Memorial Charitable Trust, maintained with Vijaya Bank, Laitumukhran Branch, Shillong and credited in the said account on 04.01.1997.

9. Mrs. L.R. Mithran, IRS received a sum of Rs. 1 lakh in the name of Zami Memorial Charitable Trust through demand draft No. 535617 dated 22.5.1997, issued by United Bank of India, G.S. Road Branch, Guwahati from dubious source, which she claimed to have received as donation, but without prior permission of or intimation to the Department.

10. Mrs. L.R. Mithran, IRS, has obtained employment for her son Shri A.R. Mithran and accommodated at Tura, Meghalaya from M/s. Kitply Industries Limited with whom she had official dealings during the year 1997.

The aforesaid act of Mrs. L.R. Mithran, IRS constitute departmental misconduct in contravention of Rule 3 (1), rule 4 and 18(3) of C.C.S. (Conduct) Rules, 1964."

The Articles of Charge framed on the basis of the above Statement of Imputation are as under:-

**"ARTICLE OF CHARGE NO.1:**

*Whereas Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she during the year 1996-97 obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited, Kolkata with whom she had official dealings, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of C.C.S. Conduct Rules, 1964.*

**ARTICLE OF CHARGE NO.2:**

*Whereas said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she accepted donation/gift by way of bank draft, including Tata Mobile vehicle bearing Registration No.ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s. Warren Tea Limited, a sister concern of M/s. Kitply Industries Limited with whom she had official dealings and thereby contravened rule 3 (4)(i) and (iii) of C.C.S. Conduct Rules, 1964.*

**ARTICLE OF CHARGE NO.3:**

*Whereas said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Trust (ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority and thereby contravened rule 18 (3) and 3 (1) of C.C.S. Conduct Rules, 1964."*

## **CHAPTER - II**

### **Key Issues, Charges and the Burden of Proof**

A reading of the Statement of Imputations, as reproduced in Chapter I ante, suggests that the main allegation is that Mrs. L.R. Mithran showed undue favours to M/s. Kitply Industries Limited, Kolkata while adjudicating a show cause notice for the alleged evasion of Rs.35,79,07,804. It has been alleged specifically that she passed the adjudication order **"slicing down the evaded payment of Rs.35,79,07,804 to Rs.9,14,40,448"** for a consideration. It has been further alleged –

- (i) That she obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited with whom she had official dealings, without obtaining prior permission of the competent authority;
- (ii) That she accepted donations/gift by way of bank draft and also a Tata Mobile vehicle in the name of Zami Memorial Charitable Trust created by her in the name of her late mother; and
- (iii) That she accepted a donation of Rs.1 Lakh in the name of Zami Memorial Charitable Trust from a unknown and dubious source through bank draft without informing or taking permission from the competent authority.

#### **KEY ISSUE: Whether any undue favour shown to M/s. Kitply?**

The first key issue in this case is whether slicing down of the allegedly evaded amount of duty from Rs.35,79,07,804 to Rs.9,14,40,448 (Rs.8,13,40,448 as duty + Rs.1,01,00,000 as penalties) amounts to showing an undue favour to M/s. Kitply Industries Ltd. which would constitute an illegality or departmental misconduct. The Presenting Officer has also vehemently argued in his Written Brief that the "adjudication order sliced down the central excise duty to Rs.8,13,40,448.00 to be paid by the said firm thereby causing a loss of Rs.27,65,67,356.00 to the Government." The allegation of showing undue favour to M/s. Kitply Industries Ltd. could be sustainable only if the appellate authorities had upheld the allegation of the evaded amount being Rs.35,79,07,804 to be true.

Therefore, the orders passed by the Customs, Excise and Gold (Control) Appellate Authority (CEGAT) and the Hon'ble Supreme Court on the appeals filed against the adjudication order dated 05.12.1996 passed by Mrs. L.R. Mithran would determine whether or not any undue favour was shown to M/s. Kitply Industries Limited. Although both these appellate authorities had passed orders in relation to this matter, there has been a complete silence in the Charge Sheet about these orders. Unfortunately, the Presenting Officer has also not even made a mention of the orders passed by the Hon'ble CEGAT as well as Hon'ble Supreme Court in this very case. Is it just and proper that all evidence that favours the Charged Officer should be suppressed? The effect of the said orders on the said key issue has been discussed in detail in the subsequent chapters of this Defence Brief.

### **Charge No.1 and Burden of Proof:-**

Charge No.1 reads as under:-

*"Whereas Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she during the year 1996-97 obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited, Kolkata with whom she had official dealings without obtaining prior permission of the competent authority and thereby contravened Rule 4 of C.C.S. Conduct Rules, 1964."*

**To sustain this charge, the burden of proof lies on the department to establish that Mrs. L.R. Mithran had asked M/s. Kitply Industries Limited, directly or indirectly, to employ her son Shri A.R. Mithran with the Company or that she was aware of the fact that her son was employed with M/s. Kitply Industries Limited during the relevant time.**

In a nutshell, this charge cannot be sustainable unless the evidence adduced by the department shows that she was aware that her son, who was about 25 years of age at the relevant time, had sought employment with M/s. Kitply Industries Limited or that she had directly or indirectly asked M/s. Kitply Industries Limited to employ her son with the Company or had solicited the employment for her son in any other manner whatsoever. Just the facts that M/s. Kitply Industries Limited fell under the territorial jurisdiction of Mrs. L.R. Mithran or that she had official dealings with the said Company, cannot establish that she had secured her son's employment with the said Company.

**Charge No.2 and Burden of Proof:-**

Charge No.2 reads as under:-

*"Whereas said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she accepted donation/gift by way of bank draft, including Tata Mobile vehicle bearing RegistrationNo.ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by Warren Tea Limited, a sister concern of M/s. Kitply Industries Limited with whom she had official dealings and thereby contravened rule 3 (4)(i) and (iii) of C.C.S. Conduct Rules, 1964."*

**To sustain this charge, the burden of proof lies on the department to adduce evidence to show –**

- (i) That any Bank Draft in the name of M/s. Zami Memorial Charitable Trust was **given to Mrs. L.R. Mithran and she accepted the same;**

**OR**

That **Mrs. L.R. Mithran was aware of a donation by way of Bank Draft being** given to Zami Memorial Charitable Trust

**OR**

That **Mrs. L.R. Mithran had asked either M/s. Warren Tea Limited or M/s. Kitply Industries Limited for giving donations** by way of bank draft or in cash to Zami Memorial Charitable Trust.

**OR**

That **Mrs. L.R. Mithran or any member of her family benefitted or could have benefitted in any manner whatsoever by the said donations.**

- (ii) That Tata Mobile vehicle bearing Registration No. No.ML-05-B-2648 **was accepted by Mrs. L.R. Mithran** as a donation or gift to Zami Memorial Charitable Trust,

OR

That Mrs. L.R. Mithran was aware of the said Tata Mobile vehicle having been given as gift or donation to Zami Memorial Charitable Trust,

OR

That Mrs. L.R. Mithran had asked either M/s. Warren Tea Limited or M/s. Kitply Industries Limited or anyone else for donating the said vehicle or any other vehicle to Zami Memorial Charitable Trust.

OR

That Mrs. L.R. Mithran or any member of her family benefitted or could have benefitted from the donation of the said vehicle.

There is no doubt or dispute about the fact that Mrs. L.R. Mithran paid Rs.250 as registration fee for the Trust or that she was a Trustee of the said Trust. What is crucial is whether she or any member of her family was a beneficiary of the Trust or could have used any movable or immovable property of the Trust. There is also no doubt or dispute about the said donations having been given to the Trust, and Presenting Officer's attempt to make an issue out of it and adduce all evidence relating thereto is without purpose. It is neither denied nor disputed that Mrs. L.R. Mithran was one of the persons who promoted this Trust for the welfare of women and children. Her association with the Trust or the important position she held in the Trust is not an issue as wrongly believed by the Presenting Officer in his Written Brief. The issue is whether she secured the said donations or was even aware of these. Was she involved in the day-to-day affairs of the Trust?

In a nutshell, if she had neither asked anyone for donating any money or vehicle to M/s. Zami Memorial Charitable Trust nor was she aware of any such donation or gift, the charge must fail.

: 8 :

**Charge No.3 and Burden of Proof:-**

Charge No.3 reads as under:-

*"Whereas said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Trust (ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority and thereby contravened rule 18 (3) and 3 (1) of C.C.S. Conduct Rules, 1964."*

To sustain this charge, the **burden of proof** lies on the department to establish:

- (i) That **Mrs. L.R. Mithran had received Bank Draft of Rs.1 Lakh** in the name of Zami Memorial Charitable Trust from an unknown and dubious source; and
- (ii) **That Mrs. L.R. Mithran neither gave intimation regarding receipt of this money nor sought permission** from the competent authority for the same.

It will be discussed in the subsequent chapters as to how the Department has failed miserably in discharging the burden of proof in respect of all the allegations made in the Charge Sheet.

## CHAPTER – III

### Analysis of the testimony of the Prosecution Witnesses

None of the prosecution witnesses who appeared for the Department have supported any of the allegations made in the Charge Sheet. In fact, taking into consideration what they stated during the examination and cross-examination before the Inquiry Officer, the whole Charge Sheet gets demolished piece by piece. It is for this very fact that the Presenting Officer has not even made a brief mention of what any of the prosecution witnesses said during his or her examination or cross-examination. The evidence tendered by the prosecution witnesses establishes beyond doubt that none of the charges against the Charged Officer are proved in any manner whatsoever.

1. Testimony of Investigating Officer, Shri R.P. Bose, Deputy Superintendent of Police, Central Bureau of Investigation: [Annexure : "A-1"]

The biggest blow to the Department's case comes from the testimony of the Investigating Officer, Shri R.P. Bose, Deputy Superintendent of Police, Central Bureau of Investigation (CBI). The record of the examination and cross-examination of Shri R.P. Bose, Deputy Superintendent of Police, CBI is appended as Annexure A-1 to this Defense Brief. In order to establish that there was no evidence at all to the effect that Mrs. L.R. Mithran, Charged Officer, was even aware of the fact that her son was temporarily employed with M/s. Kitply Industries Limited at the relevant time (which is the basis of Charge No.1), the questions put to the Investigating Officer and his replies as recorded at page 6 of Annexure A-1 are reproduced below:-

**"Q:- Did you come across any evidence that Mrs. L.R. Mithran was keeping a tab all the activities of her son, Shri A.R. Mithran and was aware of the fact that her son was in the employment of M/s. Kitply Industries Limited?**

**A:- No evidence was available in this regard.**

**Q:- Did you come across any evidence that Mr.A.R. Mithran informed his mother at any time about the pay or perks received by him from M/s.Kitply Industries Limited?**

**A:- No documentary evidence was available."**

With reference to Charge No.2 and Charge No.3, the questions put to the Investigating Officer during his cross-examination and his replies thereto as recorded at page 5 of Annexure A-1 are as under:-

**"Q:- Did you come across any evidence that Mrs.L.R. Mithran have personally received any cheque or draft in the name of ZMCT?**

**A:- The donation has come through post to ZMCT while the payment of the vehicle was paid directly to M/s. HAE (Dealer).**

**Q:- Was there any other payment received personally by herself?**

**A:- No**

**Q:- Did you come across any evidence that Mrs. L.R. Mithran was aware of the fact that one vehicle has been given as donation by M/s. Warren Tea Ltd, to ZMCT?**

**A:- Since she is a permanent trustee of ZMCT, she should have been aware that a donation of vehicle and cash has been given. Moreover, copies of registration certificate of the vehicle was recovered and seized during the search at her residence.**

**Q:- Does the copy of registration certificate indicate anywhere that the vehicle had been donated by M/s. Warren Tea Ltd. to ZMCT?**

**A:- It is not indicated in the registration certificate."**

It is amply clear from the above questions and answers that the charges framed in the Charge Sheet are devoid of merit and no evidence was found during investigation to sustain these charges. The Investigating Officer admits that there was no evidence that Mrs. L.R. Mithran was aware of the temporary employment of her son with M/s. Kitply Industries Limited. Just because Mr. A.R. Mithran happens to be her son, there is no ground for assuming that she must necessarily be aware of all the activities of her son who was around 25 years of age at the relevant time. Therefore, Charge No.1 gets demolished in totality. In respect of Charge No.2 and Charge no.3, the Investigating Officer admits that the donations were received by Zami Memorial Charitable Trust (ZMCT) by post and none of these payments were received personally by Mrs. L.R. Mithran. Regarding the donation of a vehicle by M/s. Warren Tea Limited to ZMCT, the Investigating Officer has found no evidence to support that she was aware of the said donation. However, he insists that since she was a permanent trustee of ZMCT, she should have been aware that "a donation of vehicle and cash has been given." What the Investigating Officer insists on is what Mrs. L.R. Mithran should have been aware and not on what she was actually aware of. Furthermore, merely because a photo copy of the registration certificate of the vehicle was in her possession does not in any manner establish that she was aware of the said vehicle having been donated by M/s. Warren Tea Limited to ZMCT. While it is true that Mrs. L.R. Mithran was a Trustee of ZMCT, she was not interfering in or participating in day-to-day affairs of ZMCT and it was rarely that she could participate in any of the activities of ZMCT because of being busy with her official schedules. Therefore, it will be unfair to attribute the knowledge of day-to-day affairs of ZMCT to her.

In totality, the testimony of the main prosecution witness i.e. the Investigating Officer itself fully demolishes the case against Mrs. L.R. Mithran.

2. Testimony of Shri Manoj Banarjee, Sub-Inspector, Central Bureau of Investigation: [Annexure : "A-2"]

The record of examination and cross-examination of Shri Manoj Banarjee, Sub-Inspector, Central Bureau of Investigation, is annexed as Annexure "A-2" to this

Defence Brief. Shri Manoj Banarjee has not supported any of the charges in the Charge Sheet. He has stated that he was not the Investigating Officer in the case but had only been asked to collect some documents by Shri R.P. Bose, Investigating Officer, and he collected the same and handed over these to the Investigating Officer.

3. **Testimony of Shri K.R. Kabui, Sub-Inspector, Central Bureau of Investigation: [Annexure : "A-3"]**

The record of examination and cross-examination of Shri K.R. Kabui, Sub-Inspector, Central Bureau of Investigation, is annexed as **Annexure "A-3"** to this Defence Brief. Shri K.R. Kabui's role was restricted only to recovery of a demand draft from State Bank of India. He did not play any other role in the investigation. There is no dispute or doubt about this demand draft, and this demand draft does not in any way go on to establish any of the charges framed against Mrs. L.R. Mithran.

4) **Testimony of Shri D.K. Thakuria, Manager, M/s. Kitply Industries Limited: [Annexure : "A-4"]**

The testimony of this prosecution witness (**Annexure "A-4"**) proves that all the charges against Mrs. L.R. Mithran are false. This is what he has stated in reply to the questions during his cross-examination:-

"10. Did you or your company KITPLY or any sister concern like Warren Tea give Smt. Mithran any cash?

Ans. No, Sir.

11. Did you or your company or any associate company give Smt. Mithran any vehicle?

Ans. No, Sir.

12. Did Smt. Mithran ask KITPLY Ltd. or Warren Tea to give her any donation to Zami Memorial Charitable Trust?

Ans. No, Sir.

13. Did Smt. Mithran ask M/s. KITPLY Ltd. or M/s. Warren Tea or any other associate company for any favour?

Ans. No, Sir.

14. Is it true that your company donated one vehicle to Zami Memorial Charitable Trust?

Ans. Yes.

15. Did you or your company or M/s. Warren Tea Ltd. at any time were asked by Smt. Mithran to donate any vehicle or money to Zami Memorial Charitable Trust?

Ans. No, Sir.

16. Did Smt. L.R. Mithran at any time give any direction to you or your company KITPLY or Warren Tea for donating any vehicle or any cash?

Ans. No, Sir.

17. Did any other person representing Smt. L.R. Mithran approach you or your company KITPLY or Warren Tea for donating any vehicle or cash to the Trust?

Ans. No, Sir.

18. Did Smt. L.R. Mithran ask you or your company M/s.KITPLY or Warren Tea for employment of her son?

Ans. No, Sir.

19. Did you at any time inform Smt. L.R. Mithran that her son was employed in KITPLY?

Ans. No, Sir.

: 14 :

20. Do you categorically say that Smt. L.R. Mithran did not ask you or your company KITPLY or Warren Tea for donation of a vehicle or any money or for the employment of her son?

Ans. Yes, I categorically say so."

5) Testimony of Shri Shambhunath Jajodia, Director of M/s. Kitply Industries Limited: [Annexure : "A-5"]

The testimony of this prosecution witness (Annexure "A-5") also establishes beyond doubt that all the charges against Mrs. L.R. Mithran are false. This is what he has stated in reply to the questions put by the Defendant Assistant during cross-examination:-

"Q:- Do you know Mrs. L.R. Mithran, Commissioner of Central Excise (Appeals)?

A:- I know Mrs. L.R. Mithran

Q:- Did she ask you or your company for any favour, donation or money for her or for any members of her family?

A:- No Sir.

Q:- Did she ask for the employment of her son in your company?

A:- No Sir.

Q:- Did your Company ever inform Mrs. L.R. Mithran, Commissioner that her son was employed or associated with M/s. Kitply Industries Limited?

A:- No, we did not inform her.

Q:- Whenever you employ a person in your Company, do you inform the persons' parents that he is employed with you?

A:- No, Sir."

6) **Testimony of Shri P. Haridasan Nair, Executive (Legal),  
M/s. Kitply Industries Limited [Annexure : "A-6"]**

Testimony of this prosecution witness (**Annexure "A-6"**) has also not supported any of the charges mentioned in the Charge Sheet. This is what he has stated in reply to the questions put by the Defence Assistant during the cross-examination:

**"Q:- Did Mrs. L.R. Mithran ask you to donate any vehicle or any cash to M/s. Zami Memorial Charitable Trust? Did Mrs. L.R. Mithran at any time gave any direction to you or your Company for donating any vehicle or cash to Zami Memorial Charitable Trust?**

**A:- No, I am not aware of any such requisition.**

**Q:- Did any other person representing Mrs. L.R. Mithran approach you or your Company for donating any vehicle or cash to the Zami Memorial Charitable Trust?**

**A:- No Sir, nobody approached me.**

**Q:- Did Mrs. L.R. Mithran ask your Company for employing her son in your Company?**

**A:- No, Sir.**

**Q:- Did you or your Company at any time inform Mrs. L.R. Mithran that her son was employed by you or was conducting any export business on your behalf?**

**A:- I am not aware of any such thing."**

7) **Testimony of Shri Anil Kumar Banka, Director, M/s.  
Kitply Industries Limited [Annexure : "A-7"]**

Testimony of this prosecution witness (**Annexure "A-7"**) demolishes all the three charges levelled against Mrs. L.R. Mithran. In reply to the questions put by the Defence Assistant, Shri Anil Kumar Banka, replied as under:-

**“Q:- Did Mrs. L.R. Mithran ask you to donate any vehicle or any cash to M/s. Zami Memorial Charitable Trust? Did Mrs. L.R. Mithran at any time gave any direction to you or your Company for donating any vehicle or cash to Zami Memorial Charitable Trust?”**

**A:- No, never Sir. I personally do not know the name of the Zami Memorial Charitable Trust which you are referring you.**

**Q:- Did any other person representing Mrs. L.R. Mithran approach you or your Company for donating any vehicle or cash to the Zami Memorial Charitable Trust?**

**A:- No Sir, nobody approached us.**

**Q:- Did Mrs. L.R. Mithran ask you for employing her son in your Company?**

**A:- No Sir.**

**Q:- Did you or your Company at any time inform Mrs. L.R. Mithran that her son was employed by you or was conducting any export business on your behalf?**

**A:- No Sir. I am not aware of it.**

**Q:- Do you categorically say that Mrs. L.R. Mithran did not ask you or your Company for any favour, donation or employment of any member of her family?**

**A:- No Sir, she never asked for any such favour.”**

**8) Testimony of Shri Bidhu Bhusan Khatua, employee of M/s. Kitply Industries Limited [Annexure : “A-8”]**

This prosecution witness (Annexure “A-8”) stated that he was merely a typist in the Company and had no association with the case except that he typed document numbered as D-12 in the Relied-upon documents. He stated that he knew nothing about the case. The testimony of this witness can by no stretch of imagination support any of the charges in the Charge Sheet.

9) **Testimony of Shri Om Prakash Prajapati, Accountant, M/s. Kitply Industries Limited [Annexure : "A-9"]**

Testimony of this prosecution witness (**Annexure "A-9"**) has also not supported any of the charges mentioned in the Charge Sheet. This is what he has stated in reply to the questions put by the Defence Assistant during the cross-examination:

**"Q. Do you work in Kitply Industries Ltd.?"**

**Ans. Yes Sir, I work.**

**Q. Have you heard that your Company M/s. Kitply have given a bribe or any vehicle to Mrs. L.R. Mithran?**

**Ans. No, Sir I have not heard.**

**Q. Have you heard the name of Mrs. L.R. Mithran?**

**Ans. Yes Sir. I have heard that she is the Commissioner of Central Excise.**

**Q. Have you heard that Mrs. Mithran has shown any favour to your Company M/s. Kitply Industries Limited?**

**Ans. No, Sir I have not heard."**

10) **Testimony of Shri Prabhat Kumar Bose, Managing Director, M/s. Warren Tea Limited [Annexure : "A-10"]**

Testimony of this prosecution witness (**Annexure "A-10"**) has also confirmed that they paid an amount of Rs.3,01,955 to Himmatsingka Auto Enterprises, Kolkata for purchase of a Tata diesel vehicle. He stated that he did not know Mrs. L.R. Mithran. The testimony of this witness does not support any of the allegations, directly or indirectly, as he did not even know Mrs. L.R. Mithran.

11) **Testimony of Shri Subhojit Kr. Ghosh, General Manager (Finance), Warren Tea Limited [Annexure : "A-11"]**

In his testimony, this prosecution witness (**Annexure "A-11"**) admitted only to having supplied copies of documents numbered as D-27, D-28, D-33, D-34 and D-55 to the CBI. These documents have been analyzed in the next Chapter. Shri Ghosh also stated that they claimed benefit under Section 80G of the Income Tax Act in respect of the donations made to Zami Memorial Charitable Trust. The testimony of this witness does not in any manner whatsoever support the allegations levelled against Mrs. L.R. Mithran.

12) **Testimony of Shri Sanjay Sen, Manager Accounts, Warren Tea Limited [Annexure : "A-12"]**

In his testimony, this prosecution witness (**Annexure "A-12"**) only stated that they supplied copies of the documents numbered as D-24, D-25, D-26 and D-61 to the CBI. These documents have been analyzed in the next Chapter. He stated nothing except saying that they had claimed benefit of Section 80G of the Income Tax Act in respect of the donations to Zami Memorial Charitable Trust but the same had been disallowed to them by the Income Tax authorities at the time of assessment.

13) **Testimony of Shri Arun Raha of M/s. Warren Industries Limited [Annexure : "A-13"]**

Testimony of this prosecution witness (**Annexure "A-13"**) does not support any of the charges levelled against Mrs. L.R. Mithran. In reply to the questions put by the Defence Assistant, Shri Arun Raha, replied as under:-

**"Q.11 Did you know anything about this case?"**

**Ans. No.**

**Q.12 Did your Company Warren Industries or any associate company tender any money, vehicle or bribe to Smt. L.R. Mithran?**

**Ans. I do not know."**

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14) Testimony of Smt.Latchanglian Sailow, Inspector Central Excise [Annexure : "A-14"]

According to the testimony of this prosecution witness (Annexure "A-14"), she has herself been the Financial Secretary of the Zami Memorial Charitable Trust since 1998. She did not support any of the charges levelled against Mrs. L.R. Mithran in the Charge Sheet. During cross-examination, her replies to the questions put by Defence Assistant were as under:-

**"Q by DA     Were any funds of the trust used for the benefit of Mrs. L.R. Mithran or any member of her family?"**

**Ans.             No. Funds were not used for benefit of Mrs. L.R. Mithran or any member of her family.**

**Q by DA        Did Mrs. L.R. Mithran or any trustee of the trust withdraw any money from the Bank account of the Z.M.C.T. at any time?**

**Ans.             No.**

**Q by DA        Is Mrs. L.R. Mithran or any member of her family authorized to withdraw any money from the account of ZMCT?**

**Ans.             No.**

**Q by DA        Who is authorised to withdraw amounts from the account of ZMCT?**

**Ans.             Any two of the following –**

- (i)     General Secretary of the Trust**
- (ii)    Treasurer of the Trust**
- (iii)   Financial Secretary**

**can withdraw the amount.**

**Q by DA        Did Mrs. L.R. Mithran hold any of these posts in the Trust?**

**Ans.             No.**

Q by DA Did Mrs. L.R. Mithran has a right to appoint these office bearers mentioned in previous question?

Ans. No, Mrs. Mithran is not authorized to appoint. Only the senior advisors are authorized to appoint the office bearers of the trust.

Q by DA Did the ZMCT procure any funds or donation through Mrs. L.R. Mithran?

Ans. No.

Q by DA Were any funds of the trust ever used directly or indirectly for the benefit of Mrs. L.R. Mithran or the members of her family?

Ans. No.

Q by DA Were any funds of ZMCT used under directions of Mrs. L.R. Mithran for any member of her family?

Ans. No.

Q by DA Did Mrs. L.R. Mithran or any member of her family used the vehicle or any property of ZMCT?

Ans. No. They did not use."

15) Testimony of Shri Sukanta Das, Superintendent, Central Excise, Shillong [Annexure : "A-15"]

This prosecution witness (Annexure "A-15") had been called by the prosecution only to verify the signatures of Mrs. L.R. Mithran on documents numbered as D-5, D-6, and D-7. As the Charged Officer has not denied at any time that these documents were signed by her, the testimony of Shri Das is of no importance. There is nothing in his testimony which can directly or indirectly support any of the charges levelled against Mrs. L.R. Mithran in the Charge Sheet.

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- 16) Testimony of Shri Pinpin Ch. Bordoloi, Assistant Manager, State Bank of India, Guwahati [Annexure : "A-16"]

This prosecution witness (Annexure "A-16") was the Assistant Manager of SBI who had prepared the draft which is given as donation to Zami Memorial Charitable Trust. There is no dispute or doubt about the draft having been made by the State Bank of India in favour of M/s. Himmatsingka Auto Enterprises. Therefore, this testimony is of no relevance to the charges levelled against Mrs. L.R. Mithran in the Charge Sheet.

- 17) Testimony of Shri Paresh Chandra Sharmah, Deputy Manager, United Bank of India, Guwahati [Annexure : "A-17"]

This prosecution witness (Annexure "A-17") is Deputy Manager of United Bank of India from whose branch a bank draft for Rs.1 lakh was prepared which was ultimately given as donation to Zami Memorial Charitable Trust. There is no dispute about the donation having been given to Zami Memorial Charitable Trust by this draft. However, testimony of this witness is of no relevance to the charges levelled against Mrs. L.R. Mithran.

- 18) Testimony of Shri Ricky C. Momin, S/o Mr. Rocky Feller of Tura [Annexure : "A-18"]

Testimony of this prosecution witness (Annexure "A-18") has only confirmed about the electricity bills, etc. which were recovered from his possession and which relate to the accommodation occupied by Shri A.R. Mithran at Tura. This witness has specifically stated that there is no connection between his statement or documents recovered from him and Mrs. L.R. Mithran. Since no connection between these documents or statement with Mrs. L.R. Mithran has been claimed by this witness, his testimony does not in any way support the charges levelled against Mrs. L.R. Mithran.

- 19) Testimony of Shri S.K. Roy, Manager, Himmatsingka Auto Enterprise [Annexure : "A-19"]

This prosecution witness (Annexure "A-19") is a Manager of Himmatsingka Auto Enterprises who supplied a Tata diesel vehicle to Zami Memorial Charital Trust. He denied

having ever met Mrs. L.R. Mithran or having taken any instructions from Mrs. L.R. Mithran in connection with the vehicle. The questions put to him by the Defence Assistant and his replies thereto are reproduced below:-

**“Question Do you know Mrs. L.R. Mithran?”**

**Answer I do not know**

**Question Have you ever talked to Mrs. L.R. Mithran over phone or otherwise?**

**Answer No Sir.**

**Question Did Mrs. L.R. Mithran issued any instruction to you orally or in writing to deliver this vehicle?**

**Answer No Sir.**

**Question According to you is there any connection between the vehicle sold by you and Mrs. L.R. Mithran?**

**Answer No Sir, as far as my knowledge.”**

20) **Testimony of Shri Nirupam Kar, Assistant Commissioner (Vigilance) [Annexure : “A-20”]**

This prosecution witness (**Annexure “A-20”**) is Assistant Commissioner (Vigilance) who has stated that he made discreet inquiry in the case. During his cross-examination, he could not mention any person whom he contacted or any document he referred to for arriving at any conclusion. The sources of his information or the basis of this inquiry having not been recorded or disclosed by him, his testimony is of no relevance in so far as the charges in the Charge Sheet are concerned. His report is based on hearsay and imagination rather than on any reliable investigation or evidence.

21) **Testimony of Shri A.K. Das, the then Deputy Director (Anti Evasion), Kolkata [Annexure : “A-21”]**

This prosecution witness (**Annexure “A-21”**) was the Deputy Director of Anti Evasion, Kolkata at the relevant time when the case against M/s. Kitply Industries Limited was

investigated. He stated that it was not obligatory for the adjudicating authority to confirm the same amount of duty which had been demanded in the show cause notice. The questions put to him and his replies thereto during his cross-examination are reproduced below:-

**"Q:- Is it obligatory on the adjudicating authority to confirm the same amount of duty which has been proposed to recover under the show cause notice proposed by the Anti-evasion Directorate?**

**A:- Not at all. The show cause notice only proposes what appears to have been evaded. It is for the adjudicating authority to take an impartial view and to decide it on merits.**

**Q:- Is it true that it often happens that the amount of duty confirmed by the adjudicating authority is often much less than the amount of duty proposed in the show cause notice?**

**A:- It can happen and will depend on the facts of the individual case. However, I have no statistical information at hand right now.**

**Q:- Where the amount of duty confirmed by the adjudicating authority is much less than the demand proposed in the show cause notice, will it show that the adjudicating authority has shown undue favours to the party?**

**A:- I do not think so. Whenever the amount in the show cause notice is reduced or even dropped by the adjudicating authority, it is in the form of his speaking order where he gives the reason for reducing or dropping the demand and such order is subject to appeal by the department or by the party. So, the system exists to take care of the mistake, if any, committed by the adjudicating authority."**

The testimony of this witness goes on to prove that just because the amount demanded in the show cause notice is reduced by the adjudicating authority, no inference about undue favour shown to anyone can be drawn.

**Conclusions:**

In a nut-shell, the charges against Mrs. L.R. Mithran find no support from the testimony of any one of the 21 prosecution witnesses whose individual testimony has been elaborately discussed above. We should not lose sight of the fact that mere suspicion, however grave, cannot take the place of proof, as has been held by the Hon'ble Supreme Court on numerous occasions. It would be more appropriate to call all the prosecution witnesses in this case to be "defence witnesses" as their evidence alone establishes beyond doubt that the charges against Mrs. L.R. Mithran are false and unsubstantiated.

## CHAPTER IV

### Analysis of the documents relied upon in the Charge Sheet

The charges mentioned in the Charge Sheet are sought to be established by the Department through 68 documents (D-1 to D-68) listed in Annexure 'III' of the said Charge Sheet. An analysis of these documents will show that none of these documents either individually or collectively, goes on to prove any of the charges. Detailed analysis of each of the relied upon documents, is as under:-

#### D-1:

This is a Preliminary Inquiry Registration Report by the Superintendent of Police, Central Bureau of Investigation, Guwahati. This is a mere reproduction of the allegations made in the Charge Sheet, and is not by itself an evidence of any sort. Thus, this document is of no evidentiary value to establish any of the charges levelled against Mrs. L.R. Mithran.

#### D-2:

This document is a copy of the First Information Report lodged by the Superintendent of Police, Central Bureau of Investigation, Guwahati. This document too contains only the allegations and not the evidence to support the allegations. Therefore, this document is also of no evidentiary value for establishing any of the charges levelled against Mrs. L.R. Mithran.

#### D-3:

This is a copy of the Show Cause Notice issued to M/s. Kitply Industries Limited and others. This document contains allegation of evasion of Central Excise duty by M/s. Kitply Industries Limited and others.

#### D-4:

This is only a record of hearing of the case against M/s. Kitply Industries Limited and others which was held on 17.09.1996. There is no doubt or dispute about the existence of this document. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly against Mrs. L.R. Mithran.

**D-5:**

This is a copy of the adjudication order passed by Mrs. L.R. Mithran in the matter of Show Cause Notice issued to M/s. Kitply Industries Limited. There is no doubt or dispute about the existence of this document. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-6:**

This is a copy of the application for registration of Zami Memorial Charitable Trust. There is no doubt or dispute about the existence of this document or about its contents. However, this document does not establish anything except that the Trust was for charitable purposes and that Mrs. L.R. Mithran was a member of the Governing Body of the Trust as a Trustee. By no stretch of imagination, does this document support of any of the three charges levelled against Mrs. L.R. Mithran.

**D-7:**

This is a Treasury challan dated 26.11.1996. It is not at all disputed that Mrs. L.R. Mithran deposited Rs.250 for registration of the Zami Memorial Charitable Trust. In fact, she is one of the promoters of the Charitable Trust for the welfare of women and children. However, this treasury challan does not prove in any manner whatsoever the charges levelled against Mrs. L.R. Mithran either by itself or in conjunction with any other document or documents relied upon in the Charge Sheet.

**D-8:**

This is a copy of the Memorandum of Association of Zami Memorial Charitable Trust. There is no doubt or dispute about the existence of this document. However, it is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-9:**

This is a copy of the Rules and Regulations of Zami Memorial Charitable Trust, 1996. There is no doubt or dispute about the existence of this document. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-10:**

This document is the Certificate of Registration No.SR/ZMCT-730/96 of 1996 dated 27.11.1996 issued by the Registrar of Societies, Government of Meghalaya, Shillong to the Zami Memorial Charitable Trust. There is no doubt or dispute about the existence of this document. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly.

**D-11:**

This is a copy of letter of M/s. Kitply Industries Limited addressed to Zami Memorial Charitable Trust asking them for a copy of Income Tax exemption certificate issued to the said Trust. There is no doubt or dispute about the existence of this document. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly.

**D-12:**

This is a copy of letter of M/s. Kitply Industries Limited to M/s. Himmat Singhka Auto Enterprises, Kolkata under which a cheque for Rs.3,01,955 was sent to M/s.Himmat Singhka Auto Enterprises, Kolkata. There is no doubt or dispute about it. This document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-13:**

This document is Inter Office Memo dated 07.11.1996 of Himmat Singhka Auto Enterprises, Kolkata to Guwahati about their internal transactions. There is no dispute about this document. But, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly.

**D-14:**

This document is a copy of the draft for Rs.3,01,955 in favour of Himmat Singhka Auto Enterprises, Kolkata. There is no dispute or doubt about this document. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-15:**

This is a copy of the Bill no.TEZ/249/96-97 dated 08.11.1996 of Himmat Singhka Auto Enterprises, Kolkata for sale of Tata diesel vehicle to M/s. Zami Memorial Charitable Trust, Shillong. There is no dispute or doubt about this document. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-16:**

This is a receipt issued by Himmat Singhka Auto Enterprises, Kolkata in favour of Zami Memorial Charitable Trust. There is no dispute or doubt about this document. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-17:**

This is a copy of Cheque No.77-116 dated 01.11.1996 for Rs.3,01,955 drawn by M/s.Warren Tea Limited in favour of Himmat Singhka Auto Enterprises, Kolkata. There is no dispute or doubt about this document. However, it is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-18:**

This is a copy of letter No.WTL/ACCT/S-13 dated 21.12.1996 issued by M/s. Warren Tea Limited to SBI, Commercial Branch, Kolkata. There is no dispute or doubt about this document.

However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly.

**D-19:**

This is a certified copy of ledger sheet of Account No.215025 of M/s. Warren Tea Limited, Kolkata. There is no dispute or doubt about this document. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-20:**

This is a photostat copy of Demand Draft No.483425 dated 23.12.1996 for Rs.5,00,000 issued by State Bank of India, Commercial Branch, Kolkata. There is no dispute or doubt about this document. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of the existence of this document or this donation at the relevant time.

**D-21:**

This is a copy of letter dated 08.04.21000 of Shri R.A. Shah, the then Manager of Mahadevlal Nathmal, Kolkata to the Investigation Officer, CBI, Guwahati confirming about receipt of a letter from M/s. Kitply and its forwarding to HAE, Guwahati. There is no dispute or doubt about this document. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly.

**D-22:**

This document is a payment voucher No.S/1912 dated 01.11.1996 of M/s. Warren Tea Limited, Kolkata on account of a donation of Rs.3,01,955. There is no dispute or doubt about this document. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of this donation or of the existence of this document at the relevant time.

**D-23:**

This is a copy of Inter Office Memo dated 20.12.1996 of M/s. Kitply Industries Limited issued under the signature of Shri S.P. Goenka in respect of donation of Rs.5 lakhs to Zami Memorial Charitable Trust. There is no dispute or doubt about this document. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of this donation at the relevant time.

**D-24:**

This document is a copy of letter No.WTL/ACCT/D-3 dated 20.12.1996 forwarding a demand draft of Rs.5 lakhs as donation to Zami Memorial Charitable Trust addressed by M/s. Warren Tea Limited. There is no dispute or doubt about this donation having been given to the Zami memorial Charitable Trust. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of the existence of this document or the said donation at the relevant time.

**D-25:**

This is a payment voucher No.S/2337 dated 23.12.1996 issued by M/s. Warren Tea Limited, Kolkata in respect of the donation referred to in D-24 above. This document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly.

**D-26:**

This is a copy of voucher dated 23.12.1996 of State Bank of India, Commercial Branch, Kolkata issued to M/s. Warren Tea Limited in respect of a draft of Rs.5 lakhs given as donation to Zami Memorial Charitable Trust. This document is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-27:**

This is a copy of letter No.WTL/ACCT/D-3 dated 14.08.1997 addressed to Zami Memorial Charitable Trust by M/s. Warren Tea Limited in respect of donations made to them. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of the said donations at the relevant time.

**D-28:**

This document is a copy of letter No.WTL/ACCT/D-3 dated 28.12.1998 addressed by M/s. Warren Tea Limited to Zami Memorial Charitable Trust asking for official receipt for the donation. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-29:**

This is a copy of account opening form of A/c. no.10308 of Zami Memorial Charitable Trust. There is no dispute or doubt about this document. But, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-30:**

This is a copy of statement of A/c. of Zami Memorial Charitable Trust maintained with Vijaya Bank, Laitumukhrah Branch, Shillong. There is no dispute or doubt about this document. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-31:**

This is a copy of Pay-in-slip dated 03.01.1997 related to a/c. No.10308 of Zami Memorial Charitable Trust. There is no dispute or doubt about this document. There is no connection between this document and Mrs. L.R. Mithran. This document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly.

**D-32:**

This is a copy of letter No.V.563/6/67 dated 12.05.1998 of Shri B. Basu, Additional Commissioner (Vig.), O/o the DG (Vig.), Customs and Central Excise New Delhi addressed to the Superintendent of Police, CBI, Guwahati under which certain official documents and files were forwarded to C.B.I. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-33:**

This is a copy of letter No.Nil dated 27.04.2000 of Shri S.K. Ghosh, General Manager (Finance) of M/s. Warren Tea Limited, Kolkata addressed to the Investigating Officer, CBI, Anti Corruption Branch, Guwahati during investigation of the case. This document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of the existence of this document before the Charge Sheet was served on her and no connection between this document and Mrs. L.R. Mithran has been established.

**D-34:**

Copy of extracts of printed accounts books of M/s. Warren Tea Limited for the years 1996-97, 1997-98 and 1998-99. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-35:**

This is a copy of the Search List dated 09.09.1999. There is no dispute or doubt about this document. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-36:**

This document is a copy of Memo dated 15.06.1999 drawn by Inspector of CBI, Guwahati in respect of Bank Account of Zami Memorial Charitable Trust. There is no dispute or doubt about this

document. However, it is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-37:**

This document is a copy of letter No.SR-1/97/1106 dated 09.06.1999 addressed by the Registrar of Societies, Meghalaya, Shillong to the Superintendent of Police, CBI, Guwahati forwarding the file relating to the registration of Zami Memorial Charitable Trust. There is no dispute or doubt about the registration of the said Trust. Hence, this document is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-38:**

This is a copy of the Memo dated 05.08.1999 drawn by Inspector of CBI, Guwahati regarding demand draft issued by S.B.I., Kolkata. There is no dispute or doubt about the document in question. However, it is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-39:**

This document is a copy of Memo dated 05.08.1999 drawn by Inspector, CBI, Guwahati in respect of sales of M/s.Himatsinghka Auto Enterprises Guwahati. This document has no connection with Mrs. L.R. Mithran, and is thus of no evidentiary value so far as the specific charges levelled against her are concerned.

**D-40:**

This document is a copy of Memo dated 28.04.2000 under which various documents relating to donations to Zami Memorial Charitable Trust by Warren Tea Limited were produced by Shri A.K. Raha. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-41:**

This document is a copy of Memo dated 08.04.2000 relating to recovery of some inter-office communications of M/s.Himatsinghka Auto Enterprises. Mrs. L.R. Mithran has no connection with these communications and these are thus of no evidentiary value so far as the specific charges levelled against her are concerned.

**D-42:**

This is a copy of Production Memo dated 08.04.2000 in respect of documents relating to donations made by M/s. Warren Tea Limited to Zami Memorial Charitable Trust. There is no connection between these documents and Mrs. L.R. Mithran and hence these are of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of the donations in question at the relevant time.

**D-43:**

This is a copy of Memo dated 07.04.2000 under which M/s. Kitply Industries Limited tendered copies of some documents to C.B.I. There is absolutely no connection between Mrs. L.R. Mithran and these documents. This document is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-44:**

This is a copy of the letter No. KIT/CAL/ dated 07.04.2000 issued by M/s. Kitply Industries Limited to C.B.I. expressing their inability to produce copies of documents demanded by C.B.I. as they did not preserve their records beyond one year. This letter is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-45:**

This is the certified copy of the Annual Return of M/s. Kitply Industries Limited for the year 1996-97. It has no direct or indirect connection with Mrs. L.R. Mithran. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-46:**

This document is a copy of the letter No. GSR/CBI/1/2000 dated 16.5.2000 of United Bank of India addressed to the Inspector, CBI, Guwahati handing over the application for making the draft of Rs. 1 lakh in favour of Zami Memorial Charitable Trust. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran had any connection or knowledge of this draft at the relevant time.

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**D-47:**

The document is a copy of DD application dated Nil for draft of Rs.1 lakh on United Bank of India, GS Road Branch, Guwahati. This document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. Mrs. L.R. Mithran has no connection with this application or the draft. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-48:**

This document is a copy of production memo dated 25.04.2000 in respect of draft of Rs.1 lakh in favour of Zami Memorial Charitable Trust. As already mentioned above, there is no dispute or doubt about this donation having been given to the said Trust but it is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-49:**

This is a copy of Memo dated 25.05.2000 drawn by Inspector, CBI/ACB, Guwahati regarding recovery of certified copy of letter No.KIT/CA/96 dated 01.11.1996 from M/s.Kitply Industries Limited. This document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-50:**

This is a copy of letter No.SHI/Misc/CBI/DD/1/2000 dated 15.5.2000 addressed by United Bank of India to the Inspector of CBI/ACB, Guwahati regarding the demand draft for Rs.1 lakh in favour of Zami Memorial Charitable Trust. There is no dispute or doubt about the said draft having been received by the said Trust as donation. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-51:**

This is a copy of Sale Certificate dated 11.11.1996 of Himatsinghka Auto Enterprises, Tezpur (Assam) in respect of the Tata Diesel vehicle delivered to Zami Memorial Charitable Trust. This document does not support any of the three charges mentioned in the Charge Sheet, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-52:**

This document is a copy of Bill No.TEZ/249/96-97 dated 08.11.1996 of Himatsinghka Auto Enterprises, N.T. Road, Tezpur, Assam again in respect of Tata Diesel Vehicle delivered to Zami Memorial Charitable Trust. This document too does not support any of the three charges, either directly or indirectly. It is thus of no evidentiary value to establish the specific charges levelled against Mrs. L.R. Mithran.

**D-53:**

This document is a copy of registration certificate of vehicle No.ML-05B-2648 owned by Zami Memorial Charitable Trust. It does not support any of the three charges, either directly or indirectly.

**D-54:**

This document is a photostat copy of Money Account dated 01.12.1998 under the signature of Mrs.L.R. Mithran under which she gave an account of Rs.17,106.85 to the Treasurer of the Zami Memorial Charitable Trust in respect of the amounts spent for the purposes of the Trust. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. On some rare occasions, whenever her busy schedule so permitted, she handled some activities on behalf of the Trust. This document is an account of expenditure incurred on one of such occasions.

**D-55:**

This document is a copy of Income Tax Assessment Order dated 14.03.2000 in respect of M/s. Warren Tea Limited. It is of no evidentiary value to establish the specific charges levelled against Mrs. L.R. Mithran.

**D-56:**

This document is a copy of letter No.KIT/CAL/APP/97-98 dated 25.07.1997 addressed by M/s. Kitply Industries Limited to Mr. Allan R. Mithran. It is of no evidentiary value to establish the specific charges levelled against Mrs. L.R. Mithran. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of the existence of this document before the Charge Sheet was served on her.

**D-57:**

This is a copy of deposit slip of Vijaya Bank dated 26.05.1997 in respect of Zami Memorial Charitable Trust. It is of no evidentiary value to establish the specific charges levelled against Mrs. L.R. Mithran.

**D-58:**

This document is a certified copy of fax addressed by M/s. Kitply Industries Limited to M/s. Warren Tea Limited, Kolkata. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-59:**

This document is a copy of Inter Office Memo dated 06.11.1996 of Himmatsinghka Auto Enterprises, Guwahati to their Amingaon office showing receipt of payment in respect of the vehicle supplied to Zami Memorial Charitable Trust. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-60:**

This is a copy of authority slip dated 06.11.1996 of M/s. Kitply Industries Limited to Zami Memorial Charitable Trust, Shillong. It is of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-61:**

This document is a copy of letter No.WTL/ACCT/D-3 dated 12.04.2000 addressed by M/s. Warren Tea Limited to M/s. Kitply Industries Limited regarding donations to Zami Memorial Charitable

Trust. However, this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned. Furthermore, there is no evidence whatsoever that Mrs. L.R. Mithran was even aware of the donations in question at the relevant time.

**D-62:**

This document is a copy of Memo dated 24.08.2000 drawn by the Inspector of CBI/ACB, Guwahati regarding recovery of some house rent and electricity receipts. There is no connection between Mrs. L.R. Mithran and the premises to which these receipts pertain. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-63:**

This document is extracts of House Rent Account Register showing letting out of premises at Tura. There is no connection whatever between Mrs. L.R. Mithran and these premises. It is thus of no evidentiary value to establish the specific charges levelled against Mrs. L.R. Mithran.

**D-64:**

This document is a copy of letter dated 06.09.1997 addressed to S.D.O., Electrical, Tura by Mr. Khirode Mark in respect of premises stated to have rented out by Mr. A.R. Mithran. Mrs. L.R. Mithran was not even aware of the whereabouts of her son Mr. A.R. Mithran at the relevant time. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-65:**

This is a copy of printed receipt No.171872 dated 25.5.1998 issued by Meghalaya State Electricity Board, Tura. There is no connection between this document and Mrs. L.R. Mithran, and this document does not by itself or in conjunction with any other document or documents relied upon in the Charge Sheet, support any of the three charges, either directly or indirectly. It is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-66:**

This document is a copy of electricity bill dated 15.5.1998 issued to Mr. A.R. Mithran. As Mrs. L.R. Mithran was not even aware of the whereabouts of her son at the relevant time, this document is thus of no evidentiary value so far as the specific charges levelled against Mrs. L.R. Mithran are concerned.

**D-67:**

This document is a Memo dated 14.6.2000 showing recovery of a copy of Income Tax assessment of Warren Tea Limited for 1978-79 and a copy of letter written by M/s. Kitply Industries Limited to M/s. Warren Tea Limited. These documents have no direct or indirect bearing on the charges levelled against Mrs. L.R. Mithran, and are of no evidentiary value in this regard.

**D-68:**

This document is a copy of discreet Inquiry Report dated 08.12.1997 of Shri N. Kar, Assistant Commissioner (Vig.). The said officer has neither made any mention of any persons or documents from whom he claims to have received the information contained in the said Report nor has he identified any such person or document in any other manner. During his cross-examination when he appeared as prosecution witness, he could not elaborate the basis of his report. This document is thus based on hearsay and imagination rather than on any reliable investigation or evidence.

**Conclusions:**

While some of the documents mentioned above fit in bits and pieces to some insignificant parts of the story made out in the Charge Sheet, there is not a single document, which by itself or in conjunction with any other document or documents, proves any significant part whatsoever of any of the three charges levelled in the Charge Sheet. It has to be kept in mind that mere presumptions, assumptions and suspicions cannot take the place of concrete evidence which is missing absolutely in this case.

## CHAPTER - V

### Attempted Use of non-relied upon documents by the Presenting Officer

During the course of examination of the Prosecution Witnesses and also in his Written Brief, the Presenting Officer has made an attempt to rely on the unsigned statements purporting to have been recorded by the Central Bureau of Investigation (CBI). None of these statements are listed in the List of Documents (Annexure III) appended to the Charge Sheet. The Defence Assistant strongly objected to the attempted use of such non-relied upon documents by the Presenting Officer in course of hearing on 24.06.2002 before the Hon'ble Inquiring Authority. Accepting the Defence Assistant's objections, the Hon'ble Inquiring Authority passed the following order by Daily Sheet dated 24.06.2002:-

*"The Presenting Officer took up the examination of the witnesses with reference to their statements made available by the CBI. At this point, the Defence Assistant Dr. D.D. Rishi stated that the statements recorded by CBI are not cited as relied upon documents and could not be introduced as evidence at this point of time. The Presenting Officer explained that these statements are nothing but the testimony of recovery or surrendering of certain documents, available with or under the control of the witnesses. These statements per say [sic] do not contain any evidence in respect of the charges and they mostly contain personal details of the witnesses. The Defence Assistant Dr. D.D. Rishi, however persisted with his objection and wanted his objection to be placed on record. However, the explanation give by the Presenting Officer about the contents of statements made available by CBI was accepted and Defence Assistant was assured that except for the presentation or the recovery of the documents these evidence are themselves, not relied upon documents in the inquiry. The statements have no other evidentiary value and to that extent the Charged Officer's rights of a fair inquiry would not be compromised by a reference to these statements while getting the relied upon documents, recovered from these witnesses verified from them."*

As the Hon'ble Inquiring Authority has appreciated and accepted that the unsigned and non-relied upon statements purporting to have been made by some persons before CBI are of no evidentiary value, it is not considered necessary to analyse or comment on any of these statements which, in any case, do not support any of the charges in any manner whatsoever.

## CHAPTER - VI

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### An analysis of the Defence Documents

#### Defense Documents on Key Issues:

As discussed elaborately in Chapter II of this Defence Brief, one of the key issues in the case is whether slicing down of allegedly evaded amount of duty from Rs.35,79,07,804 to Rs.8,13,40,448 (exclusive of penalties of Rs.1,01,00,000) amounts to showing an undue favour to M/s. Kitply Industries Ltd. which would constitute an illegality or departmental misconduct. The Presenting Officer has also vehemently argued in his Written Brief that the "adjudication order sliced down the central excise duty to Rs.8,13,40,448.00 to be paid by the said firm thereby causing a loss of Rs.27,65,67,356.00 to the Government." This allegation of showing undue favour to M/s. Kitply Industries Ltd. could be sustainable only if the appellate authorities had upheld the allegation of the evaded amount being Rs.35,79,07,804 to be true.

At this juncture, the Defence draws the attention of Hon'ble Inquiring Authority to the judgement dated 15.06.1999 passed by the Hon'ble Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT), Eastern Bench, Kolkata, which is appended as defence document and marked as **Annexure "B-1"**. This Judgement was passed on an appeal against the adjudication order of Mrs. L.R. Mithran, which is the subject matter of this case. While the Hon'ble CEGAT's order was very much in existence when the Charge Sheet was issued to Mrs. L.R. Mithran, there is not even a faint mention of the said judgement of the Hon'ble CEGAT in the Charge Sheet. In the Presenting Officer's Brief too, there is no mention of the Hon'ble CEGAT's judgement. The obvious reason for this deliberate omission is that the said judgement by the Hon'ble CEGAT gives a death blow to the allegations made in the Charge Sheet. While Mrs. L.R. Mithran had sliced down the amount of evasion from Rs.35,79,07,804 to Rs.8,13,40,448 (Rs.8.13 Crores approx.), the Hon'ble CEGAT sliced it down to a much smaller amount of Rs.58.96 lakhs approx. (exclusive of penalty amounting to Rs.10 lakhs). Thus, the duty liability of M/s. Kitply Industries Limited determined by Hon'ble CEGAT is Rs.58.96 lakhs as against Rs.8.13 Crores determined by Mrs. L.R. Mithran. This document establishes beyond an iota of doubt that neither any undue favour was shown to M/s. Kitply Industries Limited nor Mrs. L.R. Mithran caused a revenue loss of Rs.27,65,67,356 to the Government as the Presenting Officer has taken great pains to stress before the Inquiring Authority in his Brief.

The defence also relies upon the Order dated 13.01.2000 (Annexure "B-2") passed by the Hon'ble Supreme Court of India on the Civil Appeal filed by the Department against CEGAT's decision referred to above. Sadly and unfortunately, while the order of the Hon'ble Supreme Court of India has a great bearing on this case, there is not a mention of it in the Charge Sheet or the Presenting Officer's Brief. It is by this order that the Hon'ble Supreme Court of India declined to interfere with the judgement of the Hon'ble CEGAT (which is referred above as Annexure "B-1") and dismissed the Civil Appeal filed by the Department.

### Defence Documents on Charge No.1:

Coming to Charge No.1, it has been alleged that Mrs. L.R. Mithran procured the employment of her son, Mr. A.R. Mithran with M/s. Kitply Industries Limited but did not seek the prior permission of the competent authority. It is stressed here that while the adjudication order was passed on 05.12.1996, the temporary assignment for which Mr. A.R. Mithran was engaged, started much later in July, 1997 as is evident from prosecution document numbered as D-56. In this connection, defence relies on the affidavit sworn by Mr. A.R. Mithran on 25.07.2000 before the Judicial Magistrate First Class, Shillong. A copy of the Affidavit is appended as Annexure "B-3" to this Defence Brief and was adduced in evidence during hearing on 10.08.2002. This affidavit reads *inter alia* as under:-

- "(iv) That in order to further explore the potential of the coal business and export, I met a number of persons engaged or planning to get engaged in this business. This brought me in contact with Mr. S.N. Jagodia of M/s. Kitply Industries Limited whose Company was interested in export of coal from Ghasuapara and Tura. Being convinced that I could promote their business at Tura or Ghasuapara in the field of coal export, they engaged me temporary for three months on trial basis vide their letter dated 25.07.1997 and also provided me facilities like accommodation, transport, electricity and phone, etc. in order to promote their business.
- (v) That I was living independently throughout and did not consider it necessary to inform my mother Mrs. L.R. Mithran about my work with M/s. Kitply Industries Limited nor she helped me in any manner whatsoever getting me this work or engaged.

- (vi) *That I left Tura in December, 1997 as the coal business could not take off profitably and it also ended my association with M/s. Kitply Industries Limited.*
- (vii) *That I am presently having my own business at Aizawl since 1998.*
- (viii) *That I have been living independently on my own since attaining the age of majority, and have neither asked for any help from my parents in the matter of my employment or business, nor have I considered it necessary to keep them informed about my profession, occupation, employment or business."*

If this document is read in conjunction with the testimonies of prosecution witnesses, namely Shri R.P. Bose, Deputy Superintendent of Police, CBI (Annex. A-1), Shri D.K. Thakuria (Annex. A-4), Shri Shambhunath Jajodia (Annex. A-5), Shri P. Haridasan Nair (Annex. A-6) and Shri Anil Kumar Banka (Annex. A-7) which have been analyzed in Chapter III, it becomes crystal clear that there is no evidence that Mrs. L.R. Mithran had either secured the employment of her son or was even aware of this fact at the relevant time.

### Charge Nos.2 and 3:

The defence relies on the Affidavits sworn by the following witnesses which had been submitted to the Inquiring Authority during the hearing held on 10.08.2002:

1. Mrs. Lalthan Zauvi before the Judicial Magistrate First Class, Aizawal on 07.08.2002 (**Annexure "B-4"**)
2. Mrs. L. Chungnungi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-5"**)
3. Mrs. Laldawni before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-6"**)
4. Mrs. Lalniehchawngi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-7"**)
5. Mrs. Lalremawii before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-8"**)
6. Mrs. Darthahniengi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-9"**)
7. Mrs. Hlimpuui before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-10"**)
8. Mrs. Esther Lianchhawngi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-11"**)

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9. Mrs. L.T. Muani before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-12"**)
  10. Mrs. Van Lalruati before the Judicial Magistrate First Class, Aizawal on 07.08.2002 (**Annexure "B-13"**)
  11. Mrs. Lilypuui before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-14"**)
  12. Ms. Biaksangi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-15"**)
  13. Ms. Rose Mary Lalmangaihzuai before the Judicial Magistrate First Class, Aizawal on 07.08.2002 (**Annexure "B-16"**)
  14. Mr. H.S. Kumbhat before the Judicial Magistrate First Class, Shillong on 22.07.2002 (**Annexure "B-17"**)

In perusal of these Affidavits, copies of which are appended to this Defence Brief establish that Mrs. L.R. Mithran had no part in the day-to-day affairs of the Trust and she had no control over the affairs of the Trust. These affidavits establish that:

- (i) that the trustee, Mrs. L.R. Mithran never handled any cash or the bank account of the Trust as she was not authorized to do so. Further, Mrs. L.R. Mithran did not draw any money from the account of the Trust, nor she used any of the properties of the Trust in any manner whatsoever;
- (ii) that all decisions relating to the Trust are taken by the Governing Body/Executive Committee, and not by Mrs. L.R. Mithran herself;
- (iii) that all the properties of the Trust were used for charitable work and not for any other purpose;
- (iv) that Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Trust for the use of herself or any member of her family, nor has she ever used any such property for herself or any member of her family;
- (v) that no donation in cash or kind from any company, business house or organization or firm was received through her. Mrs. L.R. Mithran neither solicited any donations on behalf of the Trust nor she received any such donation on behalf of the Trust;

- (vi) that no information or intimation was given or required to be given to Mrs. L.R. Mithran on receipt of any donation by the Trust.

It has been improperly stressed by the Presenting Officer that Mrs. L.R. Mithran was in total control of the affairs of the Trust, and in fact Mrs. L.R. Mithran and the Trust were one and the same. All the above documentary evidence negatives these conclusions. Being busy with her official duties, Mrs. L.R. Mithran rarely associated herself with the activities of the Trust, and had no control over its affairs which were taken care of by the Governing Body. Mrs. L.R. Mithran had no knowledge of the donations received by the Trust. Attention is also invited to the testimonies of the Investigating Officer, Shri R.P. Bose (**Annexure A-1**) that the donations were received by the Trust by post and none of these payments were received personally by Mrs. L.R. Mithran, testimony of Shri D.K. Thakuria, Manager, M/s. Kitply Industries Limited (**Annexure A-4**) to the effect that Mrs. L.R. Mithran had not solicited or secured any donations for the Trust nor has she aware of any such donations given to the Trust. The testimony of Shri Shambhunath Jajodia, Director of M/s. Kitply Industries Limited (**Annexure A-5**), testimony of Shri P. Haridasan Nair, Executive (Legal) of M/s. Kitply Industries Limited (**Annexure A-6**) and also the testimony of Shri Anil Kumar Banka, Director, M/s. Kitply Industries Limited (**Annexure A-7**) in this regard also establish the same.

To conclude, the Defence Documents establish beyond doubt that all the charges against Mrs. L.R. Mithran are baseless and there is absolutely no evidence to support these charges.

## CHAPTER - VII

### Defence Witnesses

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The Defence has presented ten witnesses during the hearing held on 10<sup>th</sup> August, 2002. The record of examination and re-examination of these ten defence witnesses is annexed as Annexure C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9 & C-10 respectively to this Defence Brief. The Charged Officer, Mrs. L.R. Mithran offered herself to be examined on her own behalf in terms of Rule 14 (17) of the CCS (CCA) Rules. Record of her examination and cross-examination is hereto annexed and marked as Annexure "C-11" to this Defence Brief.

The first witness who appeared for the defence was Shri T. Haokip, Additional Commissioner of Central Excise, Shillong (Annexure "C-1"). He stated that Mrs. L.R. Mithran had decided the show cause notice against M/s. Kitply Industries Limited vide adjudication order dated 15.12.1996 in which she confirmed the demand of Rs.8,23,40,448 only against the amount of Rs.35,79,07,804 demanded in the show cause notice. He then stated that this amount was further reduced by Hon'ble Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) to an amount of Rs.58,96,580 plus a penalty of Rs.10 Lakhs vide its order dated 15.06.1999. This defence witness also admitted that the appeal filed by the Department i.e. the Commissioner of Central Excise, Shillong before the Hon'ble Supreme Court against the said order of the Hon'ble CEGAT was dismissed by the Apex Court (Annexure "B-2").

The second witness who appeared for the defence was Shri H.S. Kumbhat, Chartered Accountant, who had been auditing the records of Zami Memorial Charitable Trust since 1996 (Annexure "C-2"). He stated that he did not come across any instance where the movable and immovable property of Zami Memorial Charitable Trust was used for the benefit of Mrs. L.R. Mithran or any member of her family. He further stated that he did not come across any transaction where movable or immovable property or cash or anything of Zami Memorial Charitable Trust was used for any purpose other than the purpose for which the said Trust had been created.

The next witness was Shri A.R. Mithran (Annexure "C-3"). When asked as to how he got the temporary assignment with M/s. Kitply Industries Limited for about 3 months, he stated that many of his friends were engaged in coal business and he also

thought of joining the same business when he came in contact with Shri S.N. Jagodia of M/s. Kitply Industries Limited. Shri A.R. Mithran stated that M/s. Kitply Industries Limited were already in the business of coal export and were looking for someone to further their coal business at Ghasuapara at Tura. He stated that being convinced of his potential, M/s. Kitply Industries Limited engaged him temporarily for 3 months on trial basis and also provided him the facilities like accommodation, transportation, electricity, telephone, etc. in order to promote their business. He stated categorically that her mother, Mrs. L.R. Mithran did not help him in getting this assignment/engagement with M/s. Kitply Industries Limited. He stated further that he did not inform her mother about this. He stated that although he was temporarily staying in his mother's house in May 1997, he was living independently. He stated further that since completing his graduation in 1993, he had been living independently and did not consider it necessary to inform his mother about his activities. He stated specifically that he did not inform his own about his assignment with M/s. Kitply Industries Limited.

The other witnesses who appeared for the defence were Mrs. Laldawni (Annexure "C-4"), Mrs. Lalpham Zauvi (Annexure "C-5"), Ms. Lalneihchawngi (Annexure "C-6"), Ms. Darthahneing (Annexure "C-7"), Ms. L.T. Muani (Annexure "C-8"), Ms. Lawremawii (Annexure "C-9") and Mrs. L. Chungnungi (Annexure "C-10"). All these witnesses have been associated with Zami Memorial Charitable Trust as office bearers or its members. In their oral testimony before the Inquiring Authority, all of them stated categorically that :-

- (i) Mrs. L.R. Mithran did not have control over the decision of the Governing Body which took the final decisions;
- (ii) Mrs. L.R. Mithran was not authorized to handle cash, property or bank accounts of the Trust;
- (iii) the properties of the Trust were not used for any purpose other than the purposes for which the Trust had been created;
- (iv) Mrs. L.R. Mithran or any member of her family did not ever use any movable or immovable property of the Trust;

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- (v) Mrs. L.R. Mithran did not solicit any donations in cash or any kind from any company, business house or organization for Zami Memorial Charitable Trust;
- (vi) No donations in cash or kind from any company, business house or organization were received through Mrs. L.R. Mithran;
- (vii) Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust as the same were looked after by the office bearers ;
- (viii) The control over the Trust was with the Governing Body and not with Mrs. L.R. Mithran.

The Charged Officer Mrs. L.R. Mithran opted to be examined on her own behalf in terms of Rule 14 (17) of the CCS (CCA) Rules. The questions put to her and the replies given by her are reproduced below:-

"Q. *It has been alleged by the Department that you floated a Trust, namely, Zami Memorial Charitable Trust in the name of your mother in between the hearing of the case of M/s. Kitply Industries Limited on 17.09.1996 and passing of the order on 05.12.1996 in order to receive benefits from M/s. Kitply Industries Ltd. through indirect route. Why is it that this Trust came into existence during that period?*

R. *I have been in the Department since 34 years. During these long years, I have adjudicated thousands of cases. I have been engaged in charitable work and many a times, my charitable activities might have been during the time when one or more cases were pending for adjudication before me. Therefore, there is no link between the Trust and adjudication of the case of M/s. Kitply Industries Limited.*

Q. *When the Zami Memorial Charitable Trust was created, did you have only the case of M/s. Kitply Industries Limited pending before you?*

R. *No. There were hundreds of cases.*

Q. *Is there any nexus between the adjudication of the cases of M/s. Kitply Industries Limited and the creation of the Trust?*

R. *There is absolutely no connection. It is just incidental that the Trust came into existence at that time. In fact, I had hundreds of other cases pending before me at that time.*

Q. What is then the reason that the Department has tried to allege a nexus between the adjudication order of M/s. Kitply Industries Ltd. and the creation of Zami Memorial Charitable Trust?

R. It is just because that it was one of the biggest of cases decided at Shillong which involved an allegation of evasion of duty of about Rs.36 Crores. As I had held that only about Rs.8 Crores approximately was recoverable, the Department suspected that I had confirmed a lesser amount for an illicit consideration.

Q. Did not quantifying the amount of evasion at Rs.8 Crores approx. as against Rs.36 Crores alleged in the show cause notice, amount to showing undue favour to M/s. Kitply Industries Limited?

R. No. Very purpose of adjudication is to quantify the correct amount of duty payable by the assessee. It is not necessary that whatever has been demanded in the show cause notice should be confirmed. In fact, it has been my experience for the last 34 years of my service that show cause notices are issued for highly inflated amounts as some of the departmental officers want to take credit for having detected huge amounts of evasion.

Q. In what way can you justify that your quantification of the duty liability of M/s. Kitply Industries Limited did not amount to showing them undue favour?

R. This matter had been taken to the Hon'ble CEGAT where the duty liability of M/s. Kitply Industries Limited in this case was reduced to about Rs.59 lakhs. plus a penalty of Rs.10 lakhs. Therefore, it is obvious that the quantification of duty liability of M/s. Kitply Industries Limited by me was much higher than what has finally been decided by the Appellate Authority. Therefore, it cannot be said that I had shown any undue favour to M/s. Kitply Industries Limited.

Q. Is it true that you have been associated with the Trust as one of the promoters of the Trust and you yourself deposited registration fee of Rs.250?

R. Yes.

Q. It has been alleged that you obtained registration under "hurried persuasion" with intention to receive benefits urgently. What do you say to that?

R. The application for the Trust was given in the normal course and the Registrar of Societies, Government of Meghalaya, issued the certificate in usual course. The Registrar of Societies,

**Government of Meghalaya, Shillong** is a highly placed civil servant and **nothing** bars him from acting efficiently and issuing the registration certificate without delay. We did not determine the time which he should take for issuing the certificate.

**Q.** Was the Zami Memorial Charitable Trust created for the benefit of yourself and members of your family as you have been associated with the Trust as a permanent trustee?

**R.** The Trust was created for the benefit of women and children. I and my family are trustees and no beneficiaries. In fact, I have donated my land to the Trust. There is no question of myself or any members of my family benefitting from the Trust. The rules and regulations of the Trust do not permit the same.

**Q.** Did you have absolutely authority over the said Trust?

**R.** No. All the decisions of the Trust are taken by the Governing Body. I did not have any control over the decisions of the Governing Body.

**Q.** It has been alleged that all powers originated from you and ended with you so far as the said Trust was concerned?

**R.** That is not true. The affairs of the Trust are looked after by the Governing Body and I have no control over their decisions.

**Q.** Did you participate in day-to-day affairs of the Trust?

**R.** No.

**Q.** Do you know Shri S.P. Goenka of M/s. Kitply Industries Limited?

**R.** I do not remember. I have dealt with thousands of assessees and their representatives and it is not possible for me to remember any particular representative of any particular assessee.

**Q.** Did you solicit any donations from M/s. Kitply Industries Limited or M/s. Warren Tea Limited for the Zami Memorial Charitable Trust?

**R.** No. I never solicited any donations for the said Trust or any other Trust.

**Q.** Did you received (sic) a draft of Rs.1 Lakh in the name of Zami Memorial Charitable Trust from an unidentified and unknown person?

**R.** No. I never received any cash, draft or cheque meant for Zami Memorial Charitable Trust.

**Q.** How was the draft of Rs.1 Lakh in the name of the Trust received?

**R.** I am not aware of it. However, during the course of this inquiry, I came to know that it was received by post in the Trust's office.

**Q.** Did the concerned office bearers of the Trust inform you about their having received the demand draft and a Tata diesel vehicle for use of the Trust at the relevant time?

**R.** No.

**Q.** Did you secure employment of your son, Mr. A.R. Mithran with M/s. Kitply Industries Limited?

**R.** No. My son was 25 years of age at the relevant time. As a self-respecting mother, I would never beg anybody for employment of my children. They are competent enough by themselves. In fact, my son was independent and grown-up and I was not even aware of his whereabouts at the relevant time. He lived on his own since he attained majority."

**Conclusions:**

The oral testimonies of all the Defence Witnesses prove beyond a reasonable doubt that Mrs. L.R. Mithran did not solicit or receive any donations for the Zami Memorial Charitable Trust. It is also establish beyond doubt that she did not secure the temporary assignment of her son Mr. A.R. Mithran with M/s. Kitply Industries Limited; and also that she was not made aware of it at the relevant time.

## CHAPTER – VIII

### Reply to Presenting Officer's Written Brief

The Presenting Officer had started with his presentation with Charge No.2 followed by Charge No.3 in his Brief dated 18<sup>th</sup> July, 2002. He has relegated the presentation on Charge No.1 to the last. This change of sequence speaks for itself.

2. While pressing for Charge No.2, the Presenting Officer pleads that Mrs. L.R. Mithran sliced down the Central Excise duty evasion by M/s. Kitply Industries Limited to Rs.8,13,40,448 (Rs.8.13 Crores approx.) by her adjudication order and thereby caused a loss of Rs.27,65,67,356. He makes no mention of the order dated 15.06.1999 passed by the Hon'ble Customs, Excise and Gold (Control) Appellate Authority (CEGAT) where this amount was further sliced down to a much smaller amount of Rs.58,96,580 (Rs.58.96 lakhs approx.) plus penalties of Rs.10 lakhs. If the argument of the Presenting Officer is to be accepted, while Mrs. L.R. Mithran's order caused a loss of Rs.27,65,67,356 i.e. Rs.27.65 Crores approx. to the Government, the order of the Hon'ble CEGAT caused a loss of much bigger amount of Rs.35,20,11,224 (Rs.35.20 Crores approx.). If the Presenting Officer's argument is to be accepted, the Hon'ble Supreme Court's order accepting the CEGAT's order and rejecting the Civil Appeal filed by the Department too caused a loss of Rs.35,20,11,224 to the Government. The prosecution's own witness, Shri A.K. Das had stated in his testimony (Annexure A-21) that it is not obligatory for the adjudicating authority to confirm the same amount as has been demanded in the show cause notice. Even otherwise, it will be absurd to say that adjudicating authority has no option but to confirm each and every show cause notice and if he does not, he causes a loss to the Government. Needless to add, the Presenting Officer's arguments have no legs to stand on.

3. The Presenting Officer then proceeds to argue that there is a nexus between creating the Trust in the name of late mother of Mrs. L.R. Mithran and the adjudication of the show cause notice issued to M/s. Kitply Industries Limited. He proposes to establish this nexus by relying on documents D-7, D-8, D-9 and D-10 which have already been thoroughly analysed in Chapter IV of this Defence Brief. He pleads that Mrs. L.R. Mithran was "solely involved" in the formation of the Trust in the name of her mother and "was always in total control of the Trust." The first document he has relied upon is Challan No.643 under which a registration fee

of Rs.250/- was paid on 26.09.1996. This document cannot prove that she was solely in total control of the Trust nor can it prove any nexus between the Trust and M/s. Kitply Industries Ltd. The document relied upon in the Charge Sheet and numbered as D-8 itself shows that the Trust was brought into existence by 18 persons, all of whom had signed the said document relating to the formation of the Trust. Therefore, the allegation of her being "solely involved" is baseless at the face of it. Just because registration of the Trust and the adjudication of one particular case happened in the same quarter of the year does not prove a nexus. It will be absurd to say that whatever was done by Mrs. L.R. Mithran when the adjudication order was passed, has a nexus only to the said adjudication order. Mrs. L.R. Mithran has passed a number of adjudication orders during the period and the Presenting Officer has not shown a single reason as to why he sees nexus between the registration of the Trust and the adjudication order passed in the case of M/s. Kitply Industries Ltd., and not between the Trust and any other adjudication order. The next document relied upon by the Presenting Officer to prove the nexus is the registration certificate of the Trust which was issued on 28.11.1996. The Presenting Officer pleads that registration was made under "hurried persuasion". It is not clear what leads him to the conclusion that there was "hurried persuasion with intention to seek the benefit urgently." He seems to have forgotten the fact that the registration certificate was issued by the Registrar of Societies, Government of Meghalaya, who is a highly placed State Government Official. If the said functionary of the Government of Meghalaya acted efficiently, Mrs. L.R. Mithran cannot be charged with having obtained the registration under "hurried persuasion with intention to receive the benefit urgently." The allegation casts grave aspersions on a senior officer of the State Government and is not in good taste.

4. The Presenting Officer next places reliance on the Memorandum of Association and the Rules and Regulations of the Trust to argue that Mrs. L.R. Mithran has permanent family ownership over the Trust and all powers were ultimately concentrated with Mrs. L.R. Mithran with a sole motive to utilize the Trust for the benefit of herself and for the members of her family. It appears the contents of these documents have not been carefully gone through. There is also a lack of appreciation of the significance of the terms "trustee" and "beneficiary".

Mrs. L.R. Mithran is one of the trustees but not the "beneficiary". Secondly, the control over the Trust is with the Governing Body as per Para 25 of the Rules and Regulations of the Trust. The Governing Body of the Trust consists of the following :-

- (i) President
- (ii) Vice-President
- (iii) General Secretary
- (iv) Finance Secretary
- (v) Treasurer
- (vi) Assistant General Secretary
- (vii) Advisors
- (viii) Executive Members
- (ix) Representatives
- (x) Trustees.

Mrs. L.R. Mithran could at the most be a representative trustee in the Governing Body. Attention is also invited to all the documentary evidence referred to in Chapter VI i.e. affidavits sworn by Mrs. Lalthan Zauvi (Annexure 'B-4'), Ms.L. Chungnungi (Annexure 'B-5'), Ms. Laldawni (Annexure 'B-6'), Ms. Lalneihchawngi (Annexure 'B-7'), Ms. Lalremawii (Annexure 'B-8'), Ms. Darthahnien (Annexure 'B-9'), Ms.Hlimpuui (Annexure 'B-10'), Ms. Esther Lianchhawni (Annexure 'B-11'), Ms.L.T. Muani (Annexure 'B-12'), Mrs.Vanlalruati (Annexure 'B-13'), Ms.Lilypuii (Annexure 'B-14'), Ms. Biaksangi (Annexure 'B-15'), Ms.Rose Mary Lalhmangaihzuai (Annexure 'B-16'), Shri H.S. Kumbhat (Annexure 'B-17') and oral evidence by Mrs.Laldawni (Annexure 'C-4'), Mrs. Lalpham Zauvi (Annexure 'C-5'), Ms.Lalneihchawngi (Annexure 'C-6'), Ms. Darthanhneing (Annexure 'C-7'), Ms.L.T. Muani (Annexure 'C-8'), Ms.Lawremawii (Annexure 'C-9') and Mrs. L. Chungnungi (Annexure 'C-10'). Even the Department's own witness Smt. Latchanglian Sailow, whose testimony is at Annexure: A-14, had stated categorically that Mrs. L.R. Mithran had no powers to appoint the members of the Governing Body of the Trust nor had she any control over the Trust nor she benefitted in any manner from the Trust. The Presenting Officer pleads that "though the Governing Body had been exhibited sole authority of the Trust, but in practice, the trustees are all-in-all of the Trust." Nowhere has he mentioned a single piece of evidence which shows this "practice". The Presenting Officer's argument is based on his imagination about the "practice" in the Trust rather than the facts, and all the oral and documentary evidence demolishes his argument. Just because Mrs. L.R. Mithran is the representative of all trustees, the Presenting officer

infers that "all powers originate from her and end with her." He further inferred that "the Trust is of Mrs. L.R. Mithran, the Charged Officer". It has already been shown by documentary evidence as well as oral evidence that the Trust is controlled by the Governing Body in which the trustees are just one of the nine constituents. The Presenting Officer has based his observations on suspicions rather than the hard facts which have been proved by the Defence beyond an *iota* of doubt.

5. The Presenting Officer next imagines an "indirect route" for receipt of donations to the Trust. He has tried to link Shri S.P. Goenka of M/s. Kitply Industries Limited with M/s. Warren Tea Limited, and donations given by them with a particular adjudication order passed by Mrs. L.R. Mithran. This is a figment of imagination. The prosecution witnesses, namely, (i) Shri D.K. Thakuria (Annex. A-4), (ii) Shri Shambhunath Jajodia (Annex. A-5), (iii) Shri P. Haridasan Nair (Annex. A-6) and (iv) Shri Anil Kumar Banka (Annex. A-7) and defence witnesses, namely, Mrs. Laldawni (Annexure 'C-4'), Mrs. Lalpham Zauvi (Annexure 'C-5'), Ms. Lalneihchawngi (Annexure 'C-6'), Ms. Darthanhneing (Annexure 'C-7') and also Ms. L.T. Muani (Annexure 'C-8'), Ms. Lawremawii (Annexure 'C-9') and Mrs. L. Chungnungi (Annexure 'C-10') have stated categorically that no donations were secured through Mrs. L.R. Mithran nor was she aware of these donations at the relevant time. If the Presenting Officer wanted to say that these donations were by way of bribe to Mrs. L.R. Mithran, he ought to have proven the same. Mrs. L.R. Mithran is not answerable for the standing which Shri Goenka has in M/s. Kitply Industries Limited or in M/s. Warren Tea Limited and it will be absurd to say that this imaginary story was an "indirect route" to receive any illicit benefits from M/s. Kitply Industries Limited. It is not denied that M/s. Kitply Industries Limited and M/s. Warren Tea Limited gave donations to the Trust. Therefore, a truck load of documents are not required to prove this undisputed fact. What the prosecution and the Presenting Officer have failed miserably to establish is that these donations were given at the instance of Mrs. L.R. Mithran or were connected to the adjudication order passed by Mrs. L.R. Mithran. Mere suspicions, howsoever grave, do not prove the allegations made in the Charge Sheet, particularly when a large number of prosecution witnesses, and defence witnesses have stated categorically that there is no nexus between these donations and the adjudication order passed by Mrs. L.R. Mithran.

6. The Presenting Officer has further imagined that Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited came to know that there was going to be formed a Trust by Mrs. L.R. Mithran and

he had to donate a vehicle to the Trust. According to him, there was a pre-planned strategy between Mrs. L.R. Mithran, Commissioner of Central Excise, Shillong and Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited to receive benefit in exchange for a favour to be shown during an adjudication in the case of M/s. Kitply Industries Limited. Why the said Shri S.P. Goenka has not been produced as Prosecution Witness? Why no statement of his was recorded and brought on record? There has been an attempt to hide the truth behind a long story. What the Presenting Officer should have done is to point to the evidence which establishes the nexus. The Presenting Officer has failed miserably to prove that the donations were given at the instance of Mrs. L.R. Mithran or she was even aware of these donations. He has only tried to pursue his own imaginations and suspicions.

7. Coming to Charge No.3, he stresses that Zami Memorial Charitable Trust received a donation of Rs.1 Lakh by a demand draft for which the payment had been made in cash. He argues that there was a prohibition of issuing of demand draft on deposit of cash in excess of Rs.50,000. He pleads further that an unidentified man had asked Union Bank of India, Kolkata to issue the said demand draft of Rs.1 Lakh in favour of Zami Memorial Charitable Trust. He further says that it is not known from whom the demand draft of Rs.1 Lakh had been received by Zami Memorial Charitable Trust. There is no doubt about the facts stated by the Presenting Officer, but where is the connection between these facts and Mrs. L.R. Mithran? If an unknown person makes a voluntary donation to a Trust, which is a common practice in India as many donors do not like to be identified, it is absurd to charge Mrs. L.R. Mithran for an unknown person having donated some money to the Trust. It is stated by the Investigating Officer in the case himself (Annexure A-1) that the said draft had been received by post in the Trust's office. The Presenting Officer states further that Regulation 19 of the Trust mandates that donations should be accepted only from identifiable sources. There is no such stipulation in the regulation of the Trust. And in any case, Mrs. L.R. Mithran cannot be held responsible if the said Trust received a donation by post from an unidentified person.

8. The Presenting Officer's allegation that Mrs. L.R. Mithran obtained a sum of Rs.1 Lakh by the said demand draft in the name of Zami Memorial Charitable Trust from an unknown and dubious source without intimation or permission from the competent authority, is absolutely baseless in the face of the fact that she never received any such demand draft nor was she even aware of

it. The evidence on record clearly shows that the draft was received by post in the Trust's office and Mrs. L.R. Mithran had no knowledge about it.

9. The Presenting Officer has tried his best to pursue the allegation that Mrs. L.R. Mithran procured the employment of her son, Mr. A.R. Mithran with M/s. Kitply Industries Limited without obtaining prior sanction of the Government. It is abundantly clear as per the evidence referred to in Chapter III, testimonies of Mr.D.K. Thakuria, Manager of Kitply Industries Limited (Annexure 'A-4'), Mr. Shambhunath Jajodia, Director of M/s. Kitply Industries Limited (Annexure 'A-5'), Mr. P. Haridasan Nair, Executive (Legal) of M/s. Kitply Industries Limited (Annexure "A-6") and Mr. Anil Kumar Banka, Director of M/s. Kitply Industries Limited (Annexure "A-7"), the affidavit sworn by Mr. A.R. Mithran before the Judicial Magistrate First Class, Shillong (Annexure 'B-3') and also the oral testimony of Mr. A.R. Mithran before the Inquiring Authority on 10.08.2002 (**Annexure "C-3"** of this Brief) that Mrs. L.R. Mithran had neither secured the employment of her son at any time with any Company nor was she even aware of her son's temporary assignment with M/s. Kitply Industries Limited at the relevant time.

10. To conclude, the Presenting Officer has made only a feeble attempt to pursue and establish an imaginary story. While he has highlighted his suspicions, he did not have any evidence to support the allegations made in the Charge Sheet.

## CHAPTER – IX

### Summary and Conclusions

The main allegation in the Charge Sheet is that Mrs. L.R. Mithran showed undue favours to M/s. Kitply Industries Limited, Kolkata while adjudicating a show cause notice for the alleged evasion of Rs.35,79,07,804. It has been alleged specifically that she passed the adjudication order "slicing down the evaded payment of Rs.35,79,07,804 to Rs.9,14,40,448" for a consideration. It has been further alleged –

- (i) That she obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited with whom she had official dealings, without obtaining prior permission of the competent authority;
- (ii) That she accepted donations/gift by way of bank draft and also a Tata Mobile vehicle in the name of Zami Memorial Charitable Trust created by her in the name of her late mother; and
- (iii) That she accepted a donation of Rs.1 Lakh in the name of Zami Memorial Charitable Trust from a unknown and dubious source through bank draft without informing or taking permission from the competent authority.

2. The first key issue in this case is whether slicing down of the allegedly evaded amount of duty from Rs.35,79,07,804 to Rs.9,14,40,448 (Rs.8,13,40,448 as duty + Rs.1,01,00,000 as penalties) amounts to showing an undue favour to M/s. Kitply Industries Ltd. which would constitute an illegality or departmental misconduct. The Presenting Officer has also vehemently argued in his Written Brief that the "adjudication order sliced down the central excise duty to Rs.8,13,40,448.00 to be paid by the said firm thereby causing a loss of Rs.27,65,67,356.00 to the Government."

3. At this juncture, attention is again drawn to the judgement dated 15.06.1999 passed by the Hon'ble Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT), Eastern Bench, Kolkata, which is appended as defence document and marked as Annexure "B-1". This Judgement was passed on an appeal against the adjudication order of Mrs. L.R. Mithran, which is the subject matter of this case. While the Hon'ble CEGAT's order was very much in existence when the Charge Sheet was issued to Mrs. L.R. Mithran, there is not even a faint mention of the said judgement of the

Hon'ble CEGAT in the Charge Sheet. In the Presenting Officer's Brief too, there is no mention of the Hon'ble CEGAT's judgement. The obvious reason for this deliberate omission is that the said judgement by the Hon'ble CEGAT gives a death blow to the allegations made in the Charge Sheet. While Mrs. L.R. Mithran had sliced down the amount of evasion from Rs.35,79,07,804 to Rs.8,13,40,448 (Rs.8.13 Crores approx.), the Hon'ble CEGAT sliced it down to a much smaller amount of Rs.58.96 lakhs approx. (exclusive of penalty amounting to Rs.10 lakhs). Thus, the duty liability of M/s. Kitply Industries Limited determined by Hon'ble CEGAT is Rs.58.96 lakhs as against Rs.8.13 Crores determined by Mrs. L.R. Mithran. This document establishes beyond an iota of doubt that neither any undue favour was shown to M/s. Kitply Industries Limited nor Mrs. L.R. Mithran caused a revenue loss of Rs.27,65,67,356 to the Government.

4. Attention is further drawn again to the Order dated 13.01.2000 (**Annexure "B-2"**) passed by the Hon'ble Supreme Court of India on the Civil Appeal filed by the Department against CEGAT's decision referred to above. It is by this order that the Hon'ble Supreme Court of India declined to interfere with the judgement of the Hon'ble CEGAT (which is referred above as Annexure "B-1") and dismissed the Civil Appeal filed by the Department. The orders passed by the Hon'ble CEGAT as well as Hon'ble Supreme Court give a death blow to the allegations of undue favour having been shown to M/s.Kitply Industries Limited.

5. Coming to Charge No.1, it has been alleged that Mrs. L.R. Mithran procured the employment of her son, Mr. A.R. Mithran with M/s. Kitply Industries Limited but did not seek the prior permission of the competent authority. It is stressed here that while the adjudication order was passed on 05.12.1996, the temporary assignment for which Mr. A.R. Mithran was engaged, started much later in July, 1997 as is evident from prosecution document numbered as D-56. In this connection, defence relies on the affidavit sworn by Mr. A.R. Mithran on 25.07.2000 before the Judicial Magistrate First Class, Shillong. A copy of the Affidavit is appended as **Annexure "B-3"** to this Defence Brief and was adduced in evidence during hearing on 10.08.2002. This affidavit reads *inter alia* as under:-

- (iv) *That in order to further explore the potential of the coal business and export, I met a number of persons engaged or planning to get engaged in this business. This brought me in contact with Mr. S.N. Jagodia of M/s. Kitply Industries Limited whose Company was interested in export of coal from Ghasuapara and Tura. Being convinced that I could promote their business at Tura or Ghasuapara in the field of coal export, they engaged me temporary for three months on trial basis vide their letter dated 25.07.1997 and also provided me facilities like accommodation, transport, electricity and phone, etc. in order to promote their business.*
- (v) *That I was living independently throughout and did not consider it necessary to inform my mother Mrs. L.R. Mithran about my work with M/s. Kitply Industries Limited nor she helped me in any manner whatsoever getting me this work or engaged.*
- (vi) *That I left Tura in December, 1997 as the coal business could not take off profitably and it also ended my association with M/s. Kitply Industries Limited.*
- (ix) *That I am presently having my own business at Aizawl since 1998.*
- (x) *That I have been living independently on my own since attaining the age of majority, and have neither asked for any help from my parents in the matter of my employment or business, nor have I considered it necessary to keep them informed about my profession, occupation, employment or business."*

6. Mr. A.R. Mithran himself appeared as a defence witness. His testimony before the Inquiring Authority is as per Annexure C-3 to this Defence Brief. When asked as to how he got the temporary assignment with M/s. Kitply Industries Limited for about 3 months, he stated that many of his friends were engaged in coal business and he also thought of joining the same business when he came in contact with Shri S.N. Jagodia of M/s. Kitply Industries Limited. Shri A.R. Mithran stated that M/s. Kitply Industries Limited were already in the business of coal export and were looking for someone to further their coal business at Ghasuapara at Tura. He stated that being convinced of his potential, M/s. Kitply Industries Limited engaged him temporarily for 3 months on trial basis and also provided him the facilities like accommodation, transportation,

electricity, telephone, etc. in order to promote their business. He stated categorically that her mother, Mrs. L.R. Mithran did not help him in getting this assignment/engagement with M/s. Kitply Industries Limited. He stated further that he did not inform her mother about this. He stated that although he was temporarily staying in his mother's house in May 1997, he was living independently. He stated further that since completing his graduation in 1993, he had been living independently and did not consider it necessary to inform his mother about his activities. He stated specifically that he did not inform her about his assignment with M/s. Kitply Industries Limited.

7. If the contents of the affidavit of Shri A.R. Mithran and also his oral testimony are read in conjunction with the testimonies of prosecution witnesses, namely Shri R.P. Bose, Deputy Superintendent of Police, CBI (Annex. A-1), Shri D.K. Thakuria (Annex. A-4), Shri Shambhunath Jajodia (Annex. A-5), Shri P. Haridasan Nair (Annex. A-6) and Shri Anil Kumar Banka (Annex. A-7) which have been analyzed in Chapter III, it becomes crystal clear that there is no evidence that Mrs. L.R. Mithran had either secured the employment of her son or was even aware of this fact at the relevant time.

8. The next charge in the Charge Sheet is that the Mrs. L.R. Mithran accepted donation/gift by way of bank draft, including Tata Mobile vehicle bearing Registration No. ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by Warren Tea Limited, a sister concern of M/s. Kitply Industries Limited with whom she had official dealings. **To sustain this charge, the burden of proof lies on the department to adduce evidence to show that any Bank Draft in the name of M/s. Zami Memorial Charitable Trust was given to Mrs. L.R. Mithran and she accepted the same; or that Mrs. L.R. Mithran was aware of a donation by way of Bank Draft being given to Zami Memorial Charitable Trust; or that Mrs. L.R. Mithran had asked either M/s. Warren Tea Limited or M/s. Kitply Industries Limited for giving donations by way of bank draft or in cash to Zami Memorial Charitable Trust. Similarly, it has to be proved that Tata Mobile vehicle bearing Registration No. No. ML-05-B-2648 was accepted by Mrs. L.R. Mithran as a donation or gift to Zami Memorial Charitable Trust, or that Mrs. L.R. Mithran was aware of the said Tata Mobile vehicle having been given as gift or donation to Zami Memorial Charitable Trust, or that Mrs. L.R. Mithran had asked either**

M/s. Warren Tea Limited or M/s. Kitply Industries Limited or anyone else for donating the said vehicle or any other vehicle to Zami Memorial Charitable Trust.

9. There is no doubt or dispute about the fact that Mrs. L.R. Mithran paid Rs.250 as registration fee for the Trust or that she was a Trustee of the said Trust. What is crucial is whether she or any member of her family was a beneficiary of the Trust or could have used any movable or immovable property of the Trust. There is also no doubt or dispute about the said donations having been given to the Trust. It is neither denied nor disputed that Mrs. L.R. Mithran was one of the persons who promoted this Trust for the welfare of women and children. The issue is whether she secured the said donations or was even aware of these. In a nutshell, if she had neither asked anyone for donating any money or vehicle to M/s. Zami Memorial Charitable Trust nor was she aware of any such donation or gift, this charge has to fail.

10. Attention is drawn to the Affidavits sworn by the following witnesses which had been submitted to the Inquiring Authority during the hearing held on 10.08.2002:

- (i) Mrs. Lalthan Zauvi before the Judicial Magistrate First Class, Aizawal on 07.08.2002 (**Annexure "B-4"**)
- (ii) Mrs. L. Chungnungi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-5"**)
- (iii) Mrs. Laldawni before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-6"**)
- (iv) Mrs. Lalniahchawngi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-7"**)
- (v) Mrs. Lalremawii before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-8"**)
- (vi) Mrs. Darthahniengi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-9"**)
- (vii) Mrs. Hlimpuui before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-10"**)
- (viii) Mrs. Esther Lianchhawni before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-11"**)
- (ix) Mrs. L.T. Muani before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-12"**)
- (x) Mrs. Van Lalruati before the Judicial Magistrate First Class, Aizawal on 07.08.2002 (**Annexure "B-13"**)
- (xi) Mrs. Lilypuui before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-14"**)
- (xii) Ms. Biaksangi before the Judicial Magistrate First Class, Shillong on 25.07.2002 (**Annexure "B-15"**)

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- (xiii) Ms. Rose Mary Lalhmangaihzuai before the Judicial Magistrate First Class, Aizawal on 07.08.2002 (**Annexure "B-16"**)
- (xiv) Mr. H.S. Kumbhat before the Judicial Magistrate First Class, Shillong on 22.07.2002 (**Annexure "B-17"**)

11. A perusal of the above mentioned Affidavits, copies of which are appended to this Defence Brief, establish that Mrs. L.R. Mithran had no part in the day-to-day affairs of the Trust and she had no control over the affairs of the Trust. These affidavits further establish that:

- (i) that the trustee, Mrs. L.R. Mithran never handled any cash or the bank account of the Trust as she was not authorized to do so. Further, Mrs. L.R. Mithran did not draw any money from the account of the Trust, nor she used any of the properties of the Trust in any manner whatsoever;
- (ii) that all decisions relating to the Trust are taken by the Governing Body/Executive Committee, and not by Mrs. L.R. Mithran herself;
- (iii) that all the properties of the Trust were used for charitable work and not for any other purpose;
- (iv) that Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Trust for the use of herself or any member of her family, nor has she ever used any such property for herself or any member of her family;
- (v) that no donation in cash or kind from any Company, business house or organization or firm was received through her. Mrs. L.R. Mithran neither solicited any donations on behalf of the Trust nor she received any such donation on behalf of the Trust.
- (vi) that no information or intimation was given or required to be given to Mrs. L.R. Mithran on receipt of any donation by the Trust.

12. Mrs. L.R. Mithran had no knowledge of the donations received by the Trust at the relevant time. Attention is also invited to the testimonies of the Investigating Officer, Shri R.P. Bose (**Annexure A-1**) that the donations were received by the Trust by post and none of these payments were received personally by Mrs. L.R. Mithran, testimony of Shri D.K. Thakuria, Manager, M/s. Kitply

Industries Limited (**Annexure A-4**) to the effect that Mrs. L.R. Mithran had not solicited or secured any donations for the Trust nor has she aware of any such donations given to the Trust. The testimony of Shri Shambhunath Jajodia, Director of M/s. Kitply Industries Limited (**Annexure A-5**), testimony of Shri P. Haridasan Nair, Executive (Legal) of M/s. Kitply Industries Limited (**Annexure A-6**) and also the testimony of Shri Anil Kumar Banka, Director, M/s. Kitply Industries Limited (**Annexure A-7**) in this regard also establish the same.

13. Attention is drawn to the testimonies of other witnesses who appeared for the defence, namely, Mrs. Laldawni (**Annexure "C-4"**), Mrs. Lalpham Zauvi (**Annexure "C-5"**), Ms. Lalneihchawngi (**Annexure "C-6"**), Ms. Darthahneing (**Annexure "C-7"**), Ms. L.T. Muani (**Annexure "C-8"**), Ms. Lawremawii (**Annexure "C-9"**) and Mrs. L. Chungnungi (**Annexure "C-10"**). All these witnesses have been associated with Zami Memorial Charitable Trust as office bearers or its members. In their oral testimony before the Inquiring Authority, all of them stated categorically that :-

- (i) Mrs. L.R. Mithran did not have control over the decision of the Governing Body which took the final decisions;
- (ii) Mrs. L.R. Mithran was not authorized to handle cash, property or bank accounts of the Trust;
- (iii) the properties of the Trust were not used for any purpose other than the purposes for which the Trust had been created;
- (iv) Mrs. L.R. Mithran or any member of her family did not ever use any movable or immovable property of the Trust;
- (v) Mrs. L.R. Mithran did not solicit any donations in cash or any kind from any company, business house or organization for Zami Memorial Charitable Trust;
- (vi) No donations in cash or kind from any company, business house or organization were received through Mrs. L.R. Mithran;
- (vii) Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust as the same were looked after by the office bearers;

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(viii) The control over the Trust was with the Governing Body and not with Mrs. L.R. Mithran.

14. There is no nexus between creation of the Trust in the name of late mother of Mrs. L.R. Mithran and the adjudication of the show cause notice issued to M/s. Kitply Industries Limited. The document relied upon in the Charge Sheet and numbered as D-8 itself shows that the Trust was brought into existence by 18 persons, all of whom had signed the said document relating to the formation of the Trust. Just because registration of the Trust and the adjudication of one particular case happened in the same quarter of the year does not prove a nexus. It will be absurd to say that whatever was done by Mrs. L.R. Mithran when the adjudication order was passed, has a nexus only to the said adjudication order. Mrs. L.R. Mithran has passed a number of adjudication orders during the period and there is no reason to see a nexus only between the registration of the Trust and the adjudication order passed in the case of M/s. Kitply Industries Ltd., and not between the Trust and any other adjudication order.

15. The Presenting Officer has placed reliance on the Memorandum of Association and the Rules and Regulations of the Trust to argue that Mrs. L.R. Mithran has permanent family ownership over the Trust and all powers were ultimately concentrated with Mrs. L.R. Mithran with a sole motive to utilize the Trust for the benefit of herself and for the members of her family. Mrs. L.R. Mithran is one of the trustees but not the "beneficiary". Secondly, the control over the Trust is with the Governing Body as per Para 25 of the Rules and Regulations of the Trust. The Governing Body of the Trust consists of the following :-

- (i) President
- (ii) Vice-President
- (iii) General Secretary
- (iv) Finance Secretary
- (v) Treasurer
- (vi) Assistant General Secretary
- (vii) Advisors
- (viii) Executive Members
- (ix) Representatives
- (x) Trustees.

16. Mrs. L.R. Mithran could at the most be a representative trustee in the Governing Body of the Trust. Attention is also invited to all the documentary evidence referred to in Chapter VI i.e. affidavits sworn by Mrs. Lalthan Zauvi (Annexure 'B-4'), Ms. L. Chungnungi (Annexure 'B-5'), Ms. Laldawni (Annexure 'B-6'), Ms. Lalneihchawngi (Annexure 'B-7'), Ms. Lalremawii (Annexure 'B-8'), Ms. Darthahnien (Annexure 'B-9'), Ms. Hlimpuii (Annexure 'B-10'), Ms. Esther Lianchhawngi (Annexure 'B-11'), Ms. L.T. Muani (Annexure 'B-12'), Mrs. Vanlalruati (Annexure 'B-13'), Ms. Lilypuui (Annexure 'B-14'), Ms. Biaksangi (Annexure 'B-15'), Ms. Rose Mary Lalhmangaihzuai (Annexure 'B-16'), Shri H.S. Kumbhat (Annexure 'B-17'), and oral evidence by Mrs. Laldawni (Annexure 'C-4'), Mrs. Lalpham Zauvi (Annexure 'C-5'), Ms. Lalneihchawngi (Annexure 'C-6'), Ms. Darthanhneing (Annexure 'C-7'), Ms. L.T. Muani (Annexure 'C-8'), Ms. Lawremawii (Annexure 'C-9') and Mrs. L. Chungnungi (Annexure 'C-10'). Even the Department's own witness Smt. Latchanglian Sailow, whose testimony is at Annexure A-14, had stated categorically that Mrs. L.R. Mithran had no powers to appoint the members of the Governing Body of the Trust nor had she any control over the Trust nor she benefitted in any manner from the Trust. In his Brief, the Presenting Officer pleads that "though the Governing Body had been exhibited sole authority of the Trust, but in practice, the trustees are all-in-all of the Trust." Nowhere has he mentioned a single piece of evidence which shows this "practice". The Presenting Officer's argument is based on his imagination about the "practice" in the Trust rather than the facts, and all the oral and documentary evidence demolishes his argument. Just because Mrs. L.R. Mithran is the representative of all trustees, the Presenting officer infers that "all powers originate from her and end with her." He further inferred that "the Trust is of Mrs. L.R. Mithran, the Charged Officer". It has already been shown by documentary evidence as well as oral evidence that the Trust is controlled by the Governing Body in which the trustees are just one of the nine constituents.

17. The Presenting Officer has also alleged the existence of an "indirect route" for receipt of donations to the Trust. He has tried to link Shri S.P. Goenka of M/s. Kitply Industries Limited with M/s. Warren Tea Limited, and donations given by them with a particular adjudication order passed by Mrs. L.R. Mithran. This is a figment of imagination. The prosecution witnesses, namely, (i) Shri D.K. Thakuria (Annex. A-4), (ii) Shri Shambhunath Jajodia (Annex. A-5), (iii) Shri P. Haridasan Nair (Annex. A-6) and (iv) Shri Anil Kumar Banka (Annex. A-7) and defence witnesses, namely, Mrs. Laldawni

(Annexure 'C-4'), Mrs. Lalpham Zauvi (Annexure 'C-5'), Ms. Lalneihchawngi (Annexure 'C-6'), Ms. Darthanhneing (Annexure 'C-7') and also Ms. L.T. Muani (Annexure 'C-8'), Ms. Lawremawii (Annexure 'C-9') and Mrs. L. Chungnungi (Annexure 'C-10') have stated categorically that no donations were secured through Mrs. L.R. Mithran nor was she aware of these donations at the relevant time. It is not denied that M/s. Kitply Industries Limited and M/s. Warren Tea Limited gave donations to the Trust. What the prosecution and the Presenting Officer have failed miserably to establish is that these donations were given at the instance of Mrs. L.R. Mithran or were connected to the adjudication order passed by Mrs. L.R. Mithran. Mere suspicions, howsoever grave, do not prove the allegations made in the Charge Sheet, particularly when a large number of prosecution witnesses, and defence witnesses have stated categorically that there is no nexus between these donations and the adjudication order passed by Mrs. L.R. Mithran.

18. The Presenting Officer has alleged that Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited came to know that there was going to be formed a Trust by Mrs. L.R. Mithran and he had to donate a vehicle to the Trust. According to him, there was a pre-planned strategy between Mrs. L.R. Mithran, Commissioner of Central Excise, Shillong and Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited to receive benefit in exchange for a favour to be shown during an adjudication in the case of M/s. Kitply Industries Limited. Why the said Shri S.P. Goenka has not been produced as Prosecution Witness? Why no statement of his was recorded and brought on record? The Department has failed miserably to prove that the donations were given at the instance of Mrs. L.R. Mithran or she was even aware of these donations.

19. So far as the Charge No.3 is concerned, it has been alleged that Mrs. L.R. Mithran, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Charitable Trust (ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority. To sustain this charge, the burden of proof lies on the department to establish that Mrs. L.R. Mithran had received Bank Draft of Rs.1 Lakh in the name of Zami Memorial Charitable Trust from an unknown and dubious source; and that Mrs. L.R. Mithran neither gave intimation regarding receipt of this money nor sought permission from the competent authority for the same.

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20. Zami Memorial Charitable Trust received a donation of Rs.1 Lakh by a demand draft for which the payment had been made in cash by an unidentified person. An unidentified man had asked Union Bank of India, Kolkata to issue the said demand draft of Rs.1 Lakh in favour of Zami Memorial Charitable Trust. There is no doubt about these facts, but there is no connection between them facts and Mrs. L.R. Mithran. If an unknown person makes a voluntary donation to a Trust, which is a common practice in India as many donors do not like to be identified, it is absurd to charge Mrs. L.R. Mithran for this act. It is stated by the Investigating Officer in the case himself (Annexure A-1) that the said draft had been received by post in the Trust's office. The Presenting Officer has argued that Regulation 19 of the Trust mandates that donations should be accepted only from identifiable sources. There is no such stipulation in the Regulations of the Trust. And in any case, Mrs. L.R. Mithran cannot be held responsible if the said Trust received a donation by post from an unidentified person.

21. The allegation that Mrs. L.R. Mithran obtained a sum of Rs.1 Lakh by the said demand draft in the name of Zami Memorial Charitable Trust from an unknown and dubious source without intimation or permission from the competent authority, is thus absolutely baseless in the face of the fact that she never received any such demand draft. The evidence on record clearly shows that the draft was received by post in the Trust's office and Mrs. L.R. Mithran had not received it.

20. To conclude, all the three charges have been proved to be baseless. The Hon'ble Supreme Court has held on numerous occasions that mere suspicions, howsoever grave, cannot take the place of proof. Attention is drawn to the Hon'ble Supreme Court judgements in Ministry of Finance Vs. S.B. Ramesh, 1998 (3) SCC 227; 1998 AIR (SC) 853; Pawan Kumar Vs. State of Haryana, 2001 AIR (SC) 1324; and Inderjit Singh Vs. State of Punjab, 1995 (S3) SCC 289. In this case, while the Prosecution has failed to establish any of the charges, the Defence has adduced documentary as well as oral evidence to establish beyond doubt that all the charges are false and baseless.

Examination and Cross Examination of Shri R.P. Bose, Dy.S.P, CBI,  
Investigating Officer

Examination by the Presenting Officer:

Q :- It seems you have been the investigation officer of the case. I am showing you documents D - 1 preliminary inquiry registration report dated 12.03.98, D- 2 First Information Report dt. 7.1.99. Please verify that both these documents were prepared by you and signed by you.

A :- Registration report dt. 12.3.98 was registered by Shri M.K. Jha, the then SP of the CBI, Guwahati, and First Information Report dt. 7.1.99 was registered by Shri B.N. Mishra the then SP of the CBI, Guwahati. The case was endorsed to me for enquiry and investigation.

Q :- I am showing you document D-29 i.e. deposit account slip of ZMCT, D-30 i.e. bank statement of ZMCT account No. 10308, D-31 account paying slip for Rs. 5 lakhs in the Vijaya Bank to the credit of ZMCT, D-36 seizure memo, D- 46 a letter dt. 16.5.00 addressed to Shri R.P. Bose, Inspector CBI from United Bank of India. A demand draft application on the format of United Bank of India to be issued in favour of ZMCT for Rs. 1 lakh along with a demand draft dt. 20<sup>th</sup> May, '97, for Rs. 1 lakh, demand draft no. 535617, D-49 a seizure memo, D-50 letter dt. 15.5.00 from United Bank of India addressed to Shri R.P. Bose, Inspector, D-54 money account signed by Mrs. L.R. Mithran dt. 4.12.98, D-57 paying slip dt. 26.5.97 of Vijaya Bank showing credit of Rs. 1 lakh to the account of ZMCT, D-45 form of annual return of company i.e. M/s. Kitply Industries Ltd, Please go through these documents and confirm that these are the copies of the original documents seized by you during the investigation.

A :- Yes. I confirm that these are the photocopies taken from the original documents duly signed by Shri B. Das, Inspector CBI, ACB, Guwahati which were recovered during search or seized during the investigation of the case.

*Kishor Das*  
25.6.02.

*B.N. Mishra*  
25.6.02.

Contd.....2

● What was the outcome of the investigation conducted by you in this case?.

A:- On receipt of order from the Competent Authority, charge sheet was filed in the court of Special Judge, Meghalaya, Shillong and departmental action was recommended to be initiated against Mrs. L.R. Mithran the then Commissioner, C.Ex. Shillong.

CROSS-EXAMINATION BY THE DEFENCE ASSISTANT

Q:- For how many years you have been investigating officer in the CBI ?

A :- Since 11.08.82

Q :- Is it correct that the Governmental instruction provide that whenever a Govt. servant is booked under the Prevention of Corruption Act, the investigating officer should also investigate whether that the assests of that Govt officer exceeded his or her known sources of income ?

A :- Investigation is carried out on the basis of the allegations made in the First Information Report.

Q :- Is it not necessary to go into the question of disproportionate assests in all such cases? Did you investigate in this case whether the assests of Mrs. L.R. Mithran had exceeded her known source of income ?

A :- Already I have stated that the investigation was made on the basis of the FIR only. Since it was not a disproportionate assest case, investigation was not carried out on that front.

Q :- But is it not a fact that you assessed the value of various items of household in the residential premises of Mrs. L.R. Mithran when you raided her house in the presence of witnesses?

A :- Without consulting my case diary, I am not in a position to clarify this question at this belated stage.

*Handwritten signature*  
25-6-82

*Handwritten signature*  
25/6/82

Contd.....3

Q :- Are you not trying to evade answering the question? Why you have not brought a copy of your case diary while appearing as a witness in this case in the capacity of investigating officer?

A :- No, it is not true. On my transfer to Calcutta, all the records pertaining to Guwahati Branch are presently in the custody of S.P. ,CBI, Guwahati.

Q :- Did you recover or seize any unaccounted cash or property or seized any other type of assests from the residential or office premises of Mrs. L.R. Mithran when these were raided by the CBI?

A :- So far as I recollect, no cash or assests were seized but some records were recovered and seized ~~excepting~~ as mentioned in the search list, copy of which was given to Mrs. L.R. Mithran, the then Commissioner of C.Ex.

Q :- Do you want to confirm that apart from the documents no other assests or property were seized?

A :- Yes, apart from the documents, nothing were seized.

Q :- Was any moveable or immoveable property belonging to ZMCT in possession of Mrs. L.R. Mithran ?

A :- Apart from the copies of the documents which have been brought on record, nothing else recovered and seized.

Q :- Did Mrs. L.R. Mithran withdraw any amount from the bank account of ZMCT ?

A :- Without seeing the cheques of ZMCT, I am not in a position to clarify this question.

Q :- Do you mean to say that you never inspected the bank records of ZMCT ?

*K. S. Chandra*  
25.6.02.

*Mw.*  
25/6/02.

Contd.....4

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A :- In course of investigation of the case, I seized those records from the bank and perused the same for the purpose of investigation. Since the documents are not produced (withdrawn cheques), I can not give any specific reply to this question.

Q :- Did you find any evidence that Mrs. L.R. Mithran had obtained any personal pecuniary benefit from ZMCT ?

A :- Without referring to the records, it is not possible for me to give specific reply to this question.

Q :- Did you find any evidence that Mrs. L.R. Mithran used the vehicle donated to ZMCT for her own use or use of her family ?

A :- I can not recollect.

Q :- Did you seize or recover any property purchased by Mrs. L.R. Mithran for herself from the funds of ZMCT?

A :- No.

Q :- Did you come across any evidence that Mrs. L.R. Mithran was aware of the donations given to ZMCT by M/s. Kitply Industries Ltd, or M/s. Warren Tea Ltd, or any other person ?

A :- This fact was established by way of evidence during the investigation of the case.

Q :- What is evidence you are referring to ?

A :- Both oral and documentary.

Q :- Please specify the documentary and oral testimony you are referring to.

A :- Documentary evidence is the list of documents and the testimony of the witnesses are the statements recorded during the investigation. Copies of which have been supplied.

25/6/02.  
25-6-02.

Contd.....5

Q :- The copies of statements recorded by you in this case are before you. Did any representative of M/s. Warren Tea Ltd, deny that the money or vehicle was given only as donation to ZMCT for charitable purposes ?

A :- D-22 and D-23 of M/s. Warren Tea Ltd, and M/s. Kitply Industries reflect that it was a donation given to ZMCT. But as per D-55, same was dis-allowed by Shri A. Mukherjee, Joint Commissioner, Special Range-2, Income Tax, Kolkata while assessing that Income Tax matter of M/s. Warren Tea Ltd, for the assessment year 1997-98. I also state that what was rejected by Income Tax Officer is the claim for Income Tax benefit under Section 80G of the Income Tax Act.

Q :- Did you come across any evidence that Mr. L.R. Mithran have personally received any cheque or draft in the name of ZMCT ?

A :- The donation has come through post to ZMCT while the payment of the vehicle was paid directly to M/s. HAE (Dealer).

Q :- Was their any other payment received personally by herself ?

A :- No

Q :- Did you come across any evidence that Mr. L.R. Mithran was aware of the fact that one vehicle has been given as donation by M/s. Warren Tea Ltd, to ZMCT ?

A :- Since she is a permanent trustee of ZMCT, she should have been aware that a donation of vehicle and cash has been given. Moreover, copies of registration certificate of the vehicle was recovered and seized during the search at her residence.

Q :- Does the copy of registration certificate indicate anywhere that the vehicle had been donated by M/s. Warren Tea Ltd to ZMCT ?

A :- It is not indicated in the registration certificate.

Q :- During your investigation, did you come across the fact that Mr. A.R. Mithran son of Mrs. L.R. Mithran was in the employment of M/s. Kitply Industries Ltd, ?

A :- He was in employment in the coal export business of the Kitply Industries Ltd, as reflected in D-56 and D-63.

Q :- What was the approximate age of Shri A.R. Mithran at the relevant time ?

A :- Without referring my case diary I am not in a position to clarify this point.

*[Handwritten signature]*  
25.6.07

*[Handwritten signature]*  
25/6/07

Contd.....6

Q- Can you atleast say whether he was a minor or major?

A- Since he was in employment it is presumed that he was major.

Q- Did you come across any evidence that Mrs. L.R. Mithran was keeping a tab all the activities of her son Shri A.R. Mithran and was aware of the fact that her son was in the employment of M/s. Kitply Industries Ltd, ?

A- No evidence was available in this regard

Q- Did you come across any evidence that Mr. A.R. Mithran informed his mother at any time about the pay or perks received by him from M/s. Kitply Industries Ltd. ?

A- No documentary evidence was available.

*Handwritten notes:*  
25.11.02  
25.11.02

*Handwritten notes:*  
25.11.02  
C.R.P. Bose  
Dy. S.P. / C.B.I. / R.R.B.  
Kolkata

THE RECORD OF EXAMINATION AND CROSS EXAMINATION OF  
SHRI MANOJ BANARJEE, S.I CBI.

EXAMINATION BY THE PRESENTING OFFICER

- Q. By P.O. I am showing you the documents production memo dated 8.4.2000 (D-41), (D-42) and documents production memo dated 7.4.2000 (D-43) alongwith (D-13), (D-14), (D-19), (D-21) and (D-44). Please go through these and confirm that the documents were retrieved/collected by you.
- Ans. On going through the documents placed before me and the copies of production memo placed before me I state that I have collected all these documents in question through production memo attached here.

CROSS EXAMINATION BY THE DEFENCE ASSISTANT

- Q.. By D.A Are you the Investigating Officer of the case ?
- Ans. No, Sir I have done the part of investigation.
- Q. Why you did not do the full investigation ?
- Ans. The main Investigating Officer is Mr. R.P. Bose, presently D.S.P, CBI who instructed me to conduct a part of the investigation.
- Q. Do you draw any inference from the part of investigation that you did ?
- Ans. I was required to collect the documents and inferences were not required to be drawn by me.
- Q. Do the documents seized by you established any irregularities or violation of law ?
- Ans. The documents were only collected by me and not seized by me and since I have not conducted the full investigation I cannot comment whether these documents established any violation of law .
- Q. Do you see any violation of Law by these documents which are placed before you ?
- Ans. I stand by my earlier statement that I cannot comment on the violation of law on the basis of these documents .

*Manoj Banarjee*  
 21/02/02  
 S.I. CBI, A.C.B. (West)

*Krishna*  
 21.6.02

Q. Did you make up your own mind about the seizure of the documents or the main investigating officer indicated you the documents to be recovered?


Ans. The investigating officer of the case had given me the list of the documents to be recovered.

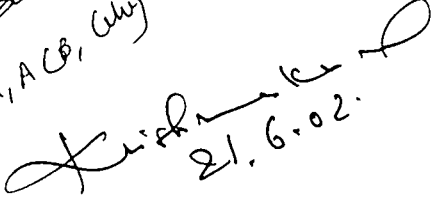
Q. Do you agree that your role is only to recover these documents and you have not played any further role in the investigation ?

Ans. Yes, my role was limited to the collection of these documents.

Q. Do you think that the documents recovered by you are an evidence of any violation of law ?

Ans. I stand by my earlier answer that I cannot draw any inference about the violation of law as my role was confined only to recovery of all these documents.

  
Signature  
(Manoj Kumar)  
Sr. CB, A.C., (W)

  
21.6.02.

Record of Examination and Cross Examination of Sri K.R.Kabui , S.I. , CBI  
,Guwahati at Guwahati.  
Examination by the Presenting Officer.

Question : I am showing you the production Memo dt. 6.4.2000 ( D. 48) please confirm that the document Demand Draft No. 483423 dt. 23.12.96 was produced to you under this production memo ?

Answer : Yes.

Cross Examination by Defence Assistant.

Question : Are you Investigating Officer of this Case ?

Answer : No.

Question : Then why have you involved yourself in the seizure of this case ?

Ans : I was directed by the main Investigating Officer Sri R.P.Bose to conduct this investigation .

Question : Was your role restricted to recovery of this document only ?

Ans : Yes.

Question : Apart from recovery of the Demand Draft from the SBI , you did not play any role at all in the investigation ?

Ans. : It is true.

Question : What action do you take after recovery of Demand Draft from Bank ?

Ans : I prepared the seizure memo and handed over the document to main Investigating Officer.

Question : Do you examine any other aspect of the Case ?

Answer : I did not

*K.R. Kabui*  
21.6.02.

*Adarsh*  
24/06/02.  
Signature .

Examination by the Presenting Officer

1. I am showing the statement dated 18.8.99 of PW-11. Please go through the statement and confirm whether you have given this statement to CBI officer.

A. Yes, I have given the statement.

Cross Examination by the Defence Assistant

1. Did the CBI Officer tell you as to why he wants to record your statement?

A. The CBI had told me that there is an allegation against some lady and the statement is to be recorded in this context.

2. Did CBI tell you the name of the lady?

Ans. It has been long time, I do not remember.

3. Do you remember as to what is allegation against the lady?

Ans. No, I do not remember, Sir.

4. Do you know Smt. L R Mithran, Commissioner of Central Excise & Customs (Appeals), Guwahati?

Ans. Yes, I know.

5. Have you ever met her?

Ans. No, I have never met her.

6. How do you know her?

Ans. I have heard of her. She is an important figure.

7. Have you seen her?

Ans. No, Sir. I have never seen her.

8. Have you heard anything about the case against her?

Ans. No, I have not heard anything.

9. Did you or your company KITPLY offer Smt. Mithran any bribe?

Ans. No.

10. Did you or your company KITPLY or any sister concern like Warren Tea give Smt Mithran any cash?

Ans. No, Sir.

11. Did you or your company or any associate company give Smt Mithran any vehicle?

Ans. No, Sir.

12. Did Smt. Mithran ask KITPLY Ltd. or Warren Tea to give her any donation to Zami Memorial Charitable Trust?

Ans. No, Sir.

13. Did Smt Mithran ask M/s KITPLY Ltd. or M/s Warren Tea or any other associate company for any favour?

Ans. No, Sir.

14. Is it true that your company donated one vehicle to Zami Memorial Charitable Trust?

Ans. Yes.

*Krishnakant*  
21.6.02.

*D. S. Jondhyan*  
The Manager  
11/6/02.

15. Did you or your company or M/s Warren Tea Ltd. at any time were asked by Smt Mithran to donate any vehicle or money to Zami Memorial Charitable Trust?

Ans. No, Sir.

16. Did Smt L R Mithran at any time give any direction to you or your company KITPLY or Warran Tea for donating any vehicle or any cash?

Ans. No, Sir.

17. Did any other person representing Smt L R Mithran approach you or your company KITPLY or Warren Tea for donating any vehicle or cash to the Trust?

Ans. No, Sir.

18. Did Smt L R Mithran ask you or your company M/s KITPLY Ltd. or Warren Tea for employment of her son?

Ans. No, Sir.

19. Did you at any time inform Smt. L R Mithran that her son was employed in KITPLY?

Ans. No, Sir.

20. Do you categorically say that Smt L R Mithran did not ask you or your company KITPLY or Warren Tea for donation of a vehicle or any money or for the employment of her son?

Ans. Yes, I categorically say so.

21. Did Smt. L R Mithran show any favour to KITPLY or Warren Tea?

Ans. No, Sir.

#### Re-Examination by the Presenting Officer

1. You have stated that neither you nor your company KITPLY has ever informed Smt Mithran regarding any donation or money or vehicle to the Trust. You are working as Manager of KITPLY in Guwahati. But on what basis you are saying that your company did not inform such things to Smt Mithran?

Ans. Since I am associated with the company, I know.

*Kishore*  
21.6.02.

*[Signature]*  
21.6.02.  
21/6/02.

**RECORD OF EXAMINATION AND CROSS-EXAMINATION OF SHRI  
SHAMBHUNATH JAJODIA, DIRECTOR OF M/S. KITPLY INDUSTRIES  
LIMITED.**

**EXAMINATION BY PRESENTING OFFICER.**

Question by P.O. :

I am showing you a document PW-14 a statement recorded by CBI on 6.7.2000 along with a document D-56. Please go through the statement and the document and confirm that you have given this statement and submitted the photo copy of letter dated 25.7.1997 (D-56).

Ans : Yes I confirm that I had handed over the copy of letter dated 25.7.1997 to CBI officers.

**CROSS-EXAMINATION BY D.A.**

Question : In what capacity are you associated with M/s. Kitply Industries Ltd.

Ans: At present, I am a full time Director and Company Secretary of the Company.

Question: Since when you have been associated with M/s. Kitply Industries Ltd.

Ans: I joined M/s. Kitply Industries Ltd. in May, 1993. Since then I am continuing.

Question : Do you know Mrs. L.R. Mitran, Commissioner of Central Excise (Appeals).

Ans: I know Mrs. L.R. Mitran.

Question: Did she ask you or your company for any favour, donation or money for her or for any members of her family.

Ans: No Sir.

Question: Did she ask for the employment of her son in your company?

Ans: No Sir.

Question. Did your Company ever inform Mrs. L.R. Mitran, Commissioner that her son was employed or associated with M/s. Kitply Industries Ltd.

Ans: No, we did not inform her.

Question: When ever you employ a person in your Company, do you inform the persons' parents that he is employed with you?

Ans. No, Sir.

*K. J. Jajodia*  
*24.6.07.*

Record of Examination and Cross-examination of Shri P. Haridasan Nair,  
Executive (Legal), M/s Kitply Industries Ltd.

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Examination by the Presenting Officer :-

Q:- I am showing you a statement recorded by CBI on 7.4.200 and also showing a letter dt.10.12.96 (D-11). Please go through the same and confirm the statement and that the document is a copy of original letter dt.10.12.96.

A:- Yes, I confirm the statement and the document.

Cross examination by Defence Assistant :-

Q:- What is your designation in the Company ?

A:- I am a Executive (Legal) of the Company i.e. M/s. Kitply.

Q:- Is the Company known as Warren Tea Ltd. also owned by M/s. Kitply Industries Ltd.?

A:- No.

Q:- Are they sister concerns ?

A:- No, they are two independent companies.

Q:- Does M/s. Kitply control the affairs of M/s. Warren Tea in any manner.?

A:- No.

Q:- Has your Company given any bribes to Mrs. L. R. Mithran in cash or in kind ?

A:- No, I am not aware of any such thing.

Q:- Did she ask for any bribe in cash or in kind ?

A:- No not to me.

Q:- Did Mrs. L.R.Mithran show you any undue favour ?

A:- No Sir.

Q:- Did Mrs. L.R.Mithran ask you to donate any vehicle or any cash to M/s. Zami Memorial Charitable Trust ? Did Mrs. L.R.Mithran at any time gave any direction to you or your Company for donating any vehicle or cash to Zami Memorial Charitable Trust?

A:- No, I am not aware of any such requisition.

Q:- Did any other person representing Mrs. L.R.Mithran approach you or your Company for donating any vehicle or cash to the Zami Memorial Charitable Trust?

A:- No Sir, nobody approached me

Q:- Did Mrs. L.R.Mithran ask your Company for employing her son in your Company?

A:- No, Sir.

Q:- Did you or your Company at any time inform Mrs. L.R.Mithran that her son was employed by you or was conducting any export business on your behalf?

A:- I am not aware of any such thing.

*Krish*  
24.6.02  
*Handwritten signature*  
24/6/02

**Record of Examination and Cross-examination of Shri Anil Kumar Banka,  
Director, M/s Kitply Industries Ltd.**

Examination by the Presenting Officer :-

Q:- Did CBI officer visited your office on 7.4.2000 and made enquiries from you ?

A:- Yes, they had put some question to me which I have replied.

Cross examination by Defence Assistant :-

Q:- What is your designation in the Company ?

A:- I am a whole-time Director of the Company i.e. M/s. Kitply.

Q:- Is the Company known as Warren Tea Ltd. also owned by M/s. Kitply Industries Ltd.?

A:- No. Warren Tea is not owned by M/s. Kitply.

Q:- Are they sister concerns ?

A:- No, they are two independent companies.

Q:- Does M/s. Kitply control the affairs of M/s. Warren Tea in any manner ?

A:- No.

Q:- Has your Company given any bribes to Mrs. L. R. Mithran in cash or in kind ?

A:- No, my Company has not given any bribe in cash or in kind to Mrs. L.R.Mithran.

Q:- Did she ask for any bribe in cash or in kind ?

A:- No sir, she never asked for anything.

Q:- Did Mrs. L.R.Mithran show you any undue favour ?

A:- No Sir.

Q:- Did Mrs. L.R.Mithran ask you to donate any vehicle or any cash to M/s. Zami Memorial Charitable Trust ? Did Mrs. L.R.Mithran at any time gave any direction to you or your Company for donating any vehicle or cash to Zami Memorial Charitable Trust?

A:- No, never Sir. I personally do not know the name of the Zami Memorial Charitable Trust which you are referring you.

Q:- Did any other person representing Mrs. L.R.Mithran approach you or your Company for donating any vehicle or cash to the Zami Memorial Charitable Trust?

A:- No Sir, nobody approached us.

Q:- Did Mrs. L.R.Mithran ask you for employing her son in your Company?

A:- No Sir.

Q:- Did you or your Company at any time inform Mrs. L.R.Mithran that her son was employed by you or was conducting any export business on your behalf?

A:- No Sir, I am not aware of it.

*Krishna*  
24.6.02

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-2-

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Q:- Do you categorically say that Mrs. L.R.Mithran did not ask you or your Company for any favour, donation or employment of any member of her family?

A:- No Sir, she never asked for any such favour.

*Krishna*  
24.6.02.

11/6/2002

Record of Examination and Cross-examination of Shri  
Bidhu Khusan Khatua, employee of M/s.Kit Ply Industries  
Ltd.

Examination by the Presenting Officer :-

Q:- I am showing you a statement recorded by CBI on 7.4.200 and a document (D-12). Please go through them and confirm that you have given the statement and confirm the document to be copy of the original letter.

A:- Yes, I gave the statement and confirm the document.

Cross examination by Defence Assistant :-

Q:- What is your designation in the Company ?

A:- I am a typist of the Company i.e. M/s. Kitply.

Q:- In what way you are associated with this case? Did you tender any evidence in this case? Are you aware of any details of this case?

A:- My association with this case is only that I typed the document D-12 and signed it. I know nothing about this case as I was only a typist in the Company.

B. Bhatia  
24.6.02

K. Khatua  
24.6.02

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**THE RECORD OF EXAMINATION AND CROSS EXAMINATION OF**  
**SHRI OM PRAKASH PRAJAPATI, ACCOUNTANT, KITPLY**  
**INDUSTRIES LTD.**

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**EXAMINATION BY THE PRESENTING OFFICER**

Q. By P.O. I am showing you a copy of statement purportedly given by you to the CBI on 16.6.2000. Please go through the statement and confirm whether this statement is given by you and the contents of the statement are correct .

Ans. Yes, I confirm.

**CROSS EXAMINATION BY THE DEFENCE ASSISTANT**

Q.. By D.A Did CBI officer informed you in what connection your statement has been given?

Ans. CBI officer informed me that there was some case.

Q. Do you know against whom the case was?

Ans. No, Sir, the CBI Officer did not inform me.

Q. Do you work in Kitply Industries Ltd.?

Ans. Yes, Sir, I work.

Q. Have you heard that your Company M/s Kitply have given a bribe or any vehicle to Mrs. L.R. Mithran?

Ans. No, Sir I have not heard.


Q. Have you heard the name of Mrs. L.R. Mithran?

Ans. Yes, Sir I have heard that she is the Commissioner of Central Excise.

Q. Have you heard that Mrs. Mithran has shown any favour to your Company M/s Kitply Industries Ltd.?

Ans. No, Sir I have not heard.

Signature

  
(OM PRAKASH PRAJAPATI)

ACCOUNTANT

KITPLY INDUSTRIES LTD.

BILWA MATHI ROAD

21/6/2000

187;

A-10

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Record of Examination and Cross Examination of Shri Parvat Kr. Bose, Managing Director,  
Warren Tea Ltd.

Examination by Presenting Officer :-

Q No. 1 : - I am showing you PW-6 i.e. a statement recorded by CBI officer on 14.06.2000. Please  
peruse the statement and confirm whether this statement was given by you.

Answer :-

Yes I confirm my statement.

Q No. 2 : - I am showing you document D-17, a copy of (chit dt. 1.11.96 for Rs. 301955/- issued by M/s.  
Warren Tea Limited), D-18 a letter dt. 21.12.96 written by Warren Tea Ltd, document D-23 copy of a note  
dt. 20.12.96 on note pad of M/s. Kitply Industries addressed to Shri Parvat Kr. Bose from Shri S.P.  
Goenka, document D-20 copy of a demand draft dt. 23.12.96 for Rs. five lakhs in favour of ZMCT, D-22  
copy of payment voucher dt. 11.11.96, D-58 copy of a fax communication of message dt. 11.11.96 on  
note pad of M/s. Kitply Industries from Shri S.P. Goenka. Please perused these documents and confirm  
that they are the copies of original documents.

Answer :-

Yes I do confirm.

Cross Examination by the Defence Assistant -

Q No. 1 : - Your company paid an amount of Rs. 301955/- for purchase of one Tata Diesel Vehicle (Tata  
Mobile) to be given as donation to M/s. ZMCT. Was it really a donation for charitable purposes or was it  
a bribe to Smt. L.R. Mitran under the garb of donation ?

*K. S. S. S.*  
24.6.02.

*[Signature]*  
21/6/02

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P1

Answer :- We paid the amount directly to M/s. Himant Sinke Auto Enterprises, at the instance of Mr. S.P. Goenka who was a Board Advisor during the relevant point of time. This payment was made to M/s. HAE for a purchase of a vehicle. I can not say the purpose for which such a payment was made for purchase of a Tata Diesel Vehicle. At this point of time, the question of whether or not this payment was a bribe can not be answered by me.

Q No. 2 :- Had you known that this payment was directed to be made by Shri S.P. Goenka for bribing a Govt official, whether you would have made the payment as per the direction of Shri S.P. Goenka?

Answer :- No, because this payment was made for purchase of a Tata Diesel Vehicle and a cheque was made out in the name of M/s. HAE.

Q. No. 3:- Whether you made similar payments at the instance of Shri S.P. Goenka?

Answer :- We used to pay donations to various institutions. We made the donation of vehicle and Rs. 5 lakhs to M/s. ZMCT by way of bank draft at the instance of Mr. S.P. Goenka.

Q. No. 4 :- Did your company pay any bribe directly or indirectly to any Govt. official at the instance of Shri S.P. Goenka?

Answer :- No

Q. No. 5 :- Do you know Mrs. L.R. Mitran? Whether you or your company know Mrs. L.R. Mitran?

Answer :- No. So far as I am concerned, I do not know her.

*Handwritten signature*  
24.6.02.

*Handwritten signature*  
24/6/02

Record of Examination and Cross-examination of Sri Subhojit Kr. Ghosh, General Manager (finance), Warren Tea Ltd. Calcutta.

Questions by P.O. :-

Q :- I am showing you a document PW - 7 i.e. a statement recorded by CBI on 14.6.2000. Please go through the statement and confirm whether this statement was given by you.

A :- Yes, I do confirm it to be my statement.

Q:- I am putting before you documents D-27, D-28, D-33, D-34, D-55. Please peruse the documents and confirm whether these are the copies of the original documents.

A:- Yes I do confirm that originals of these documents were submitted to the CBI.

Cross-Examination by the Defence Assistant.

Questioned:- Your Company donated one Tata vehicle to M/s. Jami Memorial Charitable Trust and also donated Rs.5 lakhs to the said Trust. You also claimed before the Income Tax authorities that these donations had been made for charitable purposes and that you were entitled to Income Tax benefits under Section 80G of Income Tax Act. Is it true?

A:- Yes, we did claim the benefit under Section 80 G of the Income Tax of the donations made to Jami Memorial Charitable Trust.

24.6.02.

24/6/2002

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A-12

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Record of Examination and Cross-Examination of Shri Sanjay Sen, Manager Accounts.  
Warren Tea Ltd.

Question by P.O.:

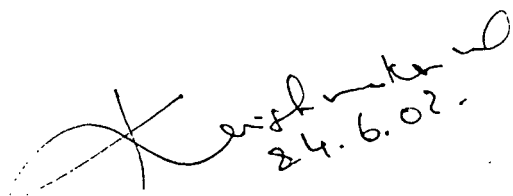
I am showing you one piece statement dated 2.5.2000 recorded by CBI alongwith document D-24, D-25, D-26 and D-61. Please go through the statement and confirm that the documents are copies of the original supplied by you to CBI.

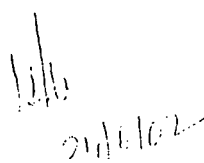
Answer: Yes I do confirm.

Cross-Examination by D.A.

Question : Your company made a donation of one Tata Vehicle of Rs.5 lakhs to ZMCT (Zami Memorial Charitable Trust). Your company also claimed before the Income-Tax authorities that these donation had been paid for charitable purposes and that were entitled to Income-Tax benefits under Sec.80G of the Income-Tax Act. Is it true.

Ans: Yes this is true. But the donation was disallowed by the Income-Tax Authorities at the time of assessment for non-production of 80G certificate.

  
24.6.02.

  
24.6.02

Record of examination and Cross examination of Sri Arun Raha. at Guwahati.

Questions by Presenting Officer

EXAMINATION

Q.1 Where were you working at the relevant time ?

A.1. At the relevant time, I was not working with Warren Tea but with Warren Industrial Ltd. Guwahati, which is an associate of Warren Tea, as an Acting Manager.

Q.2. I am showing you Document No.40 Production Memo dated 28.4.2000. Please confirm whether the document bears your signature.

A.2. Yes, it bears my signature.

Q.3. Do you confirm that the documents listed in D-40 Production Memo were handed over by you to the CBI officer Sri R.P. Bose?

A.3. I do not specifically remember. The CBI listed the documents and took my signatures.

Questions by Defence Assistant

CROSS EXAMINATION

Q.1. When the CBI officer contacted you on 28.4.2000, when you signed this production memo, what did he tell as to why he has asked you to do so ?

A.1. Actually when the Calcutta office informed me that the documents have been sent, I took it and handed over the documents to CBI officer.

Q.2. Did you give any documents to CBI ?

A.2. I do not remember whether he gave these documents to CBI.

Q.3. Did the CBI officer tell you why you have to produce these documents?

A.3. I do not remember what the CBI officer told me.

Q.4. Why did you come to CBI office?

A.4. I came to CBI office on instructions from my Calcutta Office.

Q.5. Did you give CBI anything?

A.5. I do not remember whether I have personally handed over the documents.

Q.6. Is it true that the CBI officer wrote something and told you to sign?

A.6. Yes.

Q.7. Did you feel threatened that if you do not sign it, they might try to harass you?

Contd.

A.7. I never felt threatened that if I do not sign it they might harass me.

Q.8. Is it true that you did not given any documents?

A.8. I do not remember personally handing over any documents.

Q.9. For how many hours you were in CBI office?

A.9. For one and a half hour.

Q.10. Did the CBI tell you anything about the case as to why they are asking you to sign it ?

A.10. No.

Q.11. Did you know anything about this case ?

A.11. No.

Q.12. Did your company Warren Industries or any associate company tender any money, vehicle or bribe to Smt. L.R. Mithran ?

A.12. I do not know.

Q.13. Did you know anything more about this case ?

A.13. NO.

*[Signature]*  
21.6.02

*From K. M. R. R. R.*  
21/06/2002

Examination of. Smt. Latchangliam Scilom, Inspector

Control Exercise on 22-6-2002.

Q. by P.O.: I am showing to document PW-22, a statement given by you to C.B.I. Please peruse the same and confirm that it is your statement.

Answer: Yes. The statement given by me except the portion which says that "the affairs of the Trust are run as per the directions of Mr. L. R. Mithran" in fact I stated that there is a committee who decide the affairs of the Trust.

Q. by P.O.: I am showing you documents D-9 (Rules & Regulations of Zami Memorial Trust-1996), D-10 (Certificate of registration no. SR/ZMCT-730/96 of 1996) and D-8 (Memorandum of Association of ZMCT). Pl. see and verify the documents.

Ans.: Yes I have seen and verify the documents to be the copies of the documents mentioned.

Cross Examination by D.A.

Q. by D.A. During what period you were financial secretary to the Zami Memorial Charitable Trust,

From Dec 1998 till date.

Ans.:

Cont.

22.6.02

26/02

Ans. : Yes.

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Q. by DA :

What are the main objectives of the trust?

Ans. : Mainly uplifting of women and looking after poor / orphan children.

Q. by DA :

Do the trustees of the trust have the right to use the funds for themselves?

Ans. : No.

Q. by P.A.

Are you sure that under no circumstances the trustees can use the funds for their own purpose?

Ans. : NO. Can not use for personal purpose.

Q. by DA :

What were the main occasions or major uses of the funds of the trust during your tenure?

Ans. :

- (1) For children education,
- (2) Sponsored 2 girls in NIIFT
- (3) Spent for bulldozing the land for de-addiction center.
- (4) Maintenance of vehicle of the trust and other miscellaneous items.

Q. by DA :

Were any funds of the trust used for the benefit of Mrs. L.R. Mittal or any member of her family?

Ans. :

NO. funds were not used for benefit of Mrs. L.R. Mittal or any member of her family.

22.6.02

22/6/02

Q by DA:

Did Mrs. L. R. Mithran or any trustee of the trust withdraw any money from the Bank acct of the Z.M.C.T. at any time?

Ans: NO.

Q. by DA:

Is Mrs L. R. Mithran or any member of her family authorized to withdraw any money from the acct of Z.M.C.T.?

Ans. NO.

Q. by DA

Who is authorized to withdraw ~~amounts~~ amounts from the account of Z.M.C.T.?

Ans: Any two of the following  
(i) General Secretary of the Trust  
(ii) Treasurer of the Trust  
(iii) Financial Secretary  
can withdraw the amount.

Q by DA

Did Mrs. L. R. Mithran hold any of these posts in the Trust?

Ans: NO.

Q by DA

Did Mrs. L. R. Mithran has a right to appoint those offices bears mention in previous question?

Ans: NO, Mrs Mithran is not authorized to appoint. Only the senior advisors are authorized to appoint the offices bears of the Trust.

X  
22-6-02

22/6/02

Q by DA: Did the ZMCT procure any funds for a donation through Mrs. L. R. Mithran?

Ans. No.

Q by DA: Did Mrs. L. R. Mithran herself donate any thing to ZMCT?

Ans. yes, she donated the land at Umbir village for making de-addiction center.

Q by DA: Were any funds of the trust ever used directly or indirectly for the benefit of Mrs. L. R. Mithran or the members of her family?

Ans. No.

Q. by DA: Were any funds of ZMCT used under direction of Mrs. L. R. Mithran for any members of her family?

Ans. No.

Q. by DA: Did Mrs. L. R. Mithran or any member of her family use the vehicle or any property of ZMCT

Ans. No. they did not use.

*[Signature]*  
22.6.02

*[Signature]*  
22/6/02

Q. by D.A. Is it true that Mrs. L. R. Mithran  
quantified the liability of the Co. and  
Shri P. K. Goenka, M. D. to be collectively  
at Rs 9 crore 14 lakhs 40 thousand 4  
hundred 48?

Ans.: The amount of duty confirmed is  
given in the adjudication order and  
is asked in question is correct.

Q. by D.A. Is it true that the  
notices as well as the deptt filed  
an appeal to Cegut against the  
adjudication order passed by  
Mrs. L. R. Mithran? If so what is  
the outcome?

Ans.: The Cegut determined the  
liability at Rs 69 lakhs 96  
thousand 5 hundred and 80.

Q. by D.A. Is it correct that the appeal  
filed by the deptt against  
the Cegut's order was dismissed  
by the Supreme Court?

Ans.: Yes, so far as I know it  
is dismissed.

Q. by D.A. Is it true that the order  
passed by Cegut is far favourable  
to the assessee than the  
order passed by Mr. L. R. Mithran?  
Yes, the order passed by Cegut was  
more favourable to the assessee.

16/202  
Enclined Am.:  
22.6.01 L

Q. by D.A. Is it true that Mr. L. R. Mithran qualified the liability of the Co. and Shri P. K. Goenka, M. D. to be collectively at Rs 9 crore 14 lakhs 40 thousand 4 hundred 48?

Ans.: The amount of debt confirmed is given in the adjudication order and is as set out in question is correct.

Q. by D.A. ~~Is it~~ Is it true that the notices as well as the debt filed an appeal to Court against the adjudication order passed by Mrs. L. R. Mithran? If so what is the outcome?

Ans.: The Court determined the liability at Rs 69 lakhs 96 thousand 5 hundred and 80.

Q. by D.A. Is it correct that the appeal filed by the debt against the Court's order was determined by the Supreme Court?

Ans.: Yes, so far as I know it is dismissed.

Q. by D.A. Is it true that the order passed by Court is far favourable to the assessee than the order passed by Mr. L. R. Mithran?

Ans.: Yes, the order passed by Court was more favourable to the assessee.

22/6/2022

22.6.02 L

:98:

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A-16

Record of Examination and Cross Examination of Sri Pipin Ch. Bordoloi,  
Asstt. Manager, SBI. at Guwahati

Examination by the Presenting Officer.

Question = I am showing Memos listed in D-38 bearing your signature. Please verify rather these are your signature ?

Answer = Yes, the document bears my signature.

Question - Under this document it is mentioned that document having description original D-B No. 177156 dt. 7.11.96. was produced by you to CBI. Please confirm whether you have produced the document ?

Answer - I confirm.

Cross examination by Defence Assistant.

Question = Did the CBI Officer who seized the Demand Draft from you told you as to why they were doing so ?

Answer = The CBI officer told me tht it is a piece of document.

Question = Who paid the money for this draft ?

Answer = I do not know.

Question = Do you know anything about the case in connection with which this demand draft was seized from your branch ?

Answer = No, Sir.

*[Signature]*  
21.6.02.

*[Signature]*  
21/6/02  
Signature. (Pipin Ch. Bordoloi)

:49:

A-17 159  
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**THE RECORD OF EXAMINATION AND CROSS EXAMINATION OF  
SHRI PARESH CHANDRA SHARMAH, DEPUTY MANAGER, UNITED  
BANK OF INDIA, G.S. ROAD BRANCH, GUWAHATI.**

**EXAMINATION BY THE PRESENTING OFFICER**

Q. By P.O. I am showing you a statement dated 16.5.2002. Please confirm whether this statement is given by you to the CBI Officer?

Ans. Probably I have given though I cannot remember the contents.

**CROSS EXAMINATION BY THE DEFENCE ASSISTANT**

Q.. By D.A Have you signed this statement? Is it possible that CBI Officer has written something which you have not stated?

Ans. I have not signed it. I cannot remember, I have forgotten whether the language used is the same which I spoke or it is written by CBI Officer.

Q. Do you know who paid the money for the demand draft of Rs. 1 ( one ) lac ?

Ans. I do not know. There are so many customers.

*Handwritten signature*  
21.6.02.

*Handwritten text:*  
Paresh Chandra Sharma  
Dy. Mgr. G.S. Road Br.  
UBI 21/6/02

:100:

Record of Examination & Cross Examination of Shri Ricky Co.  
Momin S/o Mr. Rocky Feller of Tura

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Question by P.O.: I am showing you a Statement (PW-15) which is recorded by CBI on 24.8.2000. Please go through the statement and confirm whether this was given by you and the contents of this statement are also confirmed by you.

Answer : Yes.

Question : I am showing you documents D-62 (Seizure Memo dated 24.8.2000, D-63 copy of the Register of Hawa Khana Building, D-64 Electricity Bill letter of Sub-Divisional Officer, Tura from Khirode Marak, D-65 Receipt of Electricity Bill, D-66 Electricity Bill in the name of Shri Alam Rokhum and D-67 Seizure Memo dated 14.6.2000. Please see them and confirm whether the documents were seized/recovered from your possession.

Answer : Yes.

Cross-examination by D.A.:

Question : Is there any mention of Mrs. L.R.Mithran in your statement from the documents seized from you ?

Answer : No. The name of Mrs. L.R.Mithran is not there in my statement or any of the documents recovered from us .

Question : Is there any connection between your statement and ~~name of~~ Mrs. L.R.Mithran? Is there any connection between the documents recovered from you and Mrs L.R.Mithran?

Answer : No. There is no connection.

*K. S. M. D.*  
22.6.02

*T. S. J.*  
22/6/02

Record of Examination and Cross Examination of Sri S.K.Roy, Manager,  
Himatsingka Auto Enterprise.

Examination by the Presenting Officer:

- Question : I am showing you document D-39. Please confirm that it bears your signature?
- Answer : Yes.
- Question : Please confirm that the document listed in D-39 are tendered by you to CBI?
- Answer : Yes. I tendered these documents to CBI.
- Question : I am showing to you statement given by you on 15.8.99 and the statement on 22.8.2K to the CBI Officer. Please, go through the statement, confirm whether you have given that statement and contents thereof?
- Answer : Yes, I have given the statements.
- Question : I am showing you copies of documents D-15, D-16, D-51, D-52 and D-59. Please, go through them and confirm whether they have been issued by M/S. Himatsingka Auto Enterprise?
- Answer : Yes.

Cross Examination by Defence Assistant.

- Question : When the CBI seized these documents and recorded your statement, did they tell you why they were doing this?
- Answer : They told me that there is some enquiry about this vehicle.
- Question : Do you know Mrs. L.R.Mithran?
- Answer : I do not know.
- Question : Have you ever talked to Mrs. L.R.Mithran over phone or otherwise?
- Answer : No Sir.
- Question : Did Mrs. L.R.Mithran issued any instruction to you orally or in writing to deliver this vehicle?
- Answer : No Sir.
- Question : According to you is there any connection between the vehicle sold by you and Mrs. L.R.Mithran?
- Answer : No Sir, as far as my knowledge.

*Handwritten signature*  
21.6.02

*Handwritten signature*  
Signature  
(S. K. Roy)  
21/6/02

**Record of Examination and Cross-examination of Shri Nirupam Kar, A.C., Vigilance**

**Question by Presenting Officer :-**

**Q:-** I am putting before you a copy of statement dt.6.7.2000 recorded by CBI along with one enquiry report dt.8.12.97 in connection with involvement of Smt. L.R.Mithran. Please go through the statement and enclosed document and verify whether this statement was tendered by you and the contents of the report dt.8.12.97.

**A:-** I do confirm.

**Cross-examination by Defence Assistant :-**

**Q:-** Is it true that you never made any enquiry in this case and your enquiry report dt.8.12.97 is imaginary?

**A:-** I deny the allegation and at the same time I must add that it was a discreet enquiry conducted in different places of North-East as per direction of D.G., Vigilance and forwarded through Additional Commissioner, Vigilance, Calcutta under whose supervision the entire action was taken.

**Q:-** What is discreet enquiry? How it was conducted in this case?

**A:-** The discreet enquiry means without summoning and recording any official documents or statements of any person and, therefore, such a report is not a conclusive report.

**Q:-** You did not call for any documents nor did you verify any fact from any witness in this case. Is it true?

**A:-** Officially we did not call for any documents, that is true, and no statements were recorded, it is also true.

**Q:-** What are the documents you called for unofficially?

**A:-** The documents might have been disclosed in the enquiry reports and subsequent reports.

**Q:-** Does it mean that you submitted more than one enquiry report?

Contd...P/2.

*X* 25.6.02 *Mp* 25.6.02

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A:- As I said earlier that it was not a conclusive report and followed by number of reports which are not in records.

Q:- I am showing you a copy of D-68 which is the enquiry report submitted and signed by you on 8.12.97. Who are the persons you contacted for enquiring the facts which you have mentioned in your enquiry report?

A:- Without referring to all records, I cannot answer.

Q:- Where are those documents?

A:- As per records it was with Directorate General of Vigilance to whom it was submitted and from there it was perhaps sent to CBI for making in depth investigation instead of conducting by Directorate of Vigilance.

Q:- I am now showing you the list of 33 witnesses cited in this case. Your name appears at Sl.No.3 in this list. Before submitting your enquiry report, did you make any enquiries with any of the remaining 32 witnesses in this case?

A:- I have already answered that my report was a discreet one and the detailed investigation was ordered to be conducted by CBI and hence the question of contacting the persons mentioned in the list (excepting me), which I have seen for the first time, does not arise.

Q:- Do you mean to say that you made discreet enquiries with the persons who are not in this list of witnesses?

A:- As I have already said that I have seen the list for the first time and also that without seeing the records I cannot make any comments.

Q:- Did you contact any witnesses at all for conducting enquiries?

A:- Obviously I have contacted a number of persons discreetly or through source.

Q:- Who are these persons?

A:- After a gap of five years I cannot answer this question without seeing the records with reference to the list shown to me.

*Keisham K. D.*  
25.6.02

Contd....p/3

*M. P. Allam*  
25.6.02

Q:- When you are fully aware that you have to appear as a witness before the enquiry authority in this case, why did you not carefully go through the records before appearing before the enquiring authority?

A:- I have objection to this question.

*Kishore*  
25.6.02.

*M. V. S.*  
21.6.02.

**Record of examination of Shri A.K.Das, the then Deputy Director (AE), Kolkata at Kolkata on 25.06.02.**

**Question by Presenting Officer :-**

**Q:-** I am producing before you a statement (PW -2) recorded by CBI and also a document(D-3), a show-cause notice dt. 28.2.95 issued to M/s. Kit Ply Industries and others. Please go through the statement and the document and confirm that you have tendered the statement to CBI and investigated the case which ultimately you propose as a show cause notice to M/s. Kit Ply.

**A:-** Yes, I have gone through both of them and confirm the same.

**Cross examination by Defence Assistant :-**

**Q:-** Is it true that the actual amount of duty evaded by M/s.Kit Ply was Rs.58,96,580/- which amount was subsequently confirmed by the CEGAT and Hon'ble Supreme Court?

**A:-** I have no knowledge about the case after it reached the Tribunal. Thereafter I was transferred from the DGAE and thereafter I have no knowledge about the further development of the case.

**Q:-** Is it true that the amount of duty evaded involved in the show cause notice proposed by the Anti-evasion Directorate was Rs.35.79 crores? Does it not show that show cause notice was issued for a highly inflated amount?

**A:-** In the DGAE, cases were investigated on the basis of available records, the understanding of the law on various points and proposed show cause notice used to be drafted issue-wise based on the evidences at hand. In this particular case also, the same norm was applied and on various points the demands were made giving the reason for the same and the basis for quantification. DGAE only investigates and proposes the show cause notice. It is approved/issued by the Commissioner concerned who is not part of Anti-evasion set up.

**Q:-** Is it obligatory on the adjudicating authority to confirm the same amount of duty which has been proposed to recover under the show cause notice proposed by the Anti-evasion Directorate?

**A:-** Not at all. The show cause notice only proposes what appears to have been evaded. It is for the adjudicating authority to take an impartial view and to decide it on merits.

*Amended.*  
25/6/02  
(A.K.DAS)

**Q:-** Is it true that it often happens that the amount of duty confirmed by the adjudicating authority is often much less than the amount of duty proposed in the show cause notice?

**A:-** It can happen and will depend on the facts of the individual case. However, I have no statistical information at hand right now.

**Q:-** Where the amount of duty confirmed by adjudicating authority <sup>is</sup> much less than the demand proposed in the show cause notice, will it show that the adjudicating authority has shown undue favours to the party?

**A:-** I do not think so. Whenever the amount in the show cause notice is reduced or even dropped <sup>by</sup> the adjudicating authority, it is in the form of his speaking order where he gives the reason for reducing or dropping the demand and such order is subject to appeal by the department or by the party. So, the system exists to take care of the mistake, if any, committed by the adjudicating authority.

me DCS.  
25/6/02  
(A K. DAS)

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7 B-1

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL  
EASTERN BENCH : CALCUTTA

1.2. APPEALS E/V-137,138/97

12 JUL 1999

Arising out of Order-in-Original No.32/Commr./Ch.44/CE/96 dated 5.12.1996 passed by Commissioner of Central Excise, Shillong.

1. M/s Kitply Industries Ltd.
2. Shri P.K.Goenka

APPELLANT (S) / APPLICANT (S)

(Rep.by Shri V.Lakshmikumaran, Advocate)

VERSUS

Commissioner of Central Excise, Shillong

RESPONDENT (S)

(Rep.by Shri N.C.Roychowdhury, Senior Advocate)

CORAM

SHRI P.C.JAIN, MEMBER (TECHNICAL)

SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

ORDER NO. M-254-255 DATED : 15.6.99

Date of the Final Hearing : 24.09.97

Date of the Pronouncement : 15.6.99

Final order -  
A. 616-617/c.e/99  
dt. 15.6.99

Per Shri P.C.Jain :-

Briefly stated, facts of the case are as follows :-

1.1 It is alleged that acting on intelligence that the appellant herein has been evading Central Excise duty through substitution of grades and undervaluation, searches were conducted by the Central Excise officers at the Head Office and different branches of Kitply spread all over India on 21.7.94 at the instance of the Director General of Anti-evasion (hereinafter referred to as DGAE). After detailed investigation through scrutiny of records and oral statements recorded from different persons, a show-cause notice dated 28.2.95 was issued to the appellant for alleged evasion of duty on account of undervaluation of goods and substitution of grade

ISSUED

Dated: 16.6.99

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by selling plywood of alleged inferior quality ('X' grade) at the price of prime or superior quality, although duty was paid at the time of clearance of the goods from its factories at the price applicable to the former inferior grade.

1.2 Undervaluation and evasion of Central Excise duty as given below was alleged under the following heads :-

(a) It was alleged that the appellant cleared about 10% goods for sales at factory-gate which were deliberately put at a far lower level, even below the cost price, to establish price under section 4 (1)(a) of the Central Excise Act, 1944. Loss incurred in these were more than made up by selling remaining about 90% from its various depots all over India by upmarking the price to the extent of 100% to 250%; sales at the factory gate were not open to all but only to some or certain selected dealers. It was alleged that evasion of duty during the period February 1990 to June 1994 was to the tune of Rs.18,47,91,347.00.

(b) It was also alleged that about 50% of the total sales of the appellant were made from the Depots to one M/s Landle & Co. (hereinafter referred to as Landle) at discounts varying from 20 to 25% and in case of inferior 'X' grade goods upto 45% as against the normal trade discount of 13% to 20% allowed to others dealers buying the goods from the depots. In lieu of this special treatment given to it, Landle had borne all the advertisement expenses for the products of the appellant. It was alleged that advertisement of a product promotes its marketability and consequently its value. Thus advertisement

cost is required to be borne by a manufacturer of the said product. Hence cost incurred by Landle on advertisement for and on behalf of the appellant was proposed to be charged to duty. Alleged evasion on this account was calculated at Rs.7,05,95,368.00 during the aforesaid period.

(c) It was also alleged that Landle had given Rs.2 crores interest-free deposit to the appellant, while no such deposits were taken from other dealers. It was, therefore, alleged that the appellant had obtained additional consideration by way of interest on such huge deposit in respect of its sales to Landle. Such additional consideration did not form part of the sale price of the goods. Alleged evasion of Central Excise duty on this score was calculated at Rs.48,48,500/-.

1.3 Next allegation was that the appellant had declared different prices of two grades of its various varieties of goods. 'X' grade was declared to be of inferior type and, therefore, its price for factory gate sale was declared at a lower level than the corresponding prime quality of goods. Consequently, lower amount of duty was paid on such 'X' grade goods. It was, however, alleged, based on evidence of sales from seven (out of twenty-two) depots (located at Vishakhapatnam, Madras, Nasik, Calcutta, Jaipur, Pune and Bangalore) that 'X' grade goods were sold as prime-quality goods at prices applicable to the latter. Evasion of Central Excise duty on this point, by removing distinction in respect of all 'X' grade goods, was alleged at Rs.9,81,77,589.00 during the aforesaid period.

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1.4 On adjudication, the Commissioner of Central Excise, Shillong (hereafter referred to as the Commissioner) dropped the demand of Rs.18,47,91,347.00 holding that the ex-factory price declared by the appellant and approved by the Revenue is not artificial. Relying further on Apex Court's judgement in the case of Indian Oxygen Ltd. [1988 (36) ELT 723] to the effect that once the factory gate price is ascertainable, all assessments would be made at that price. We consider it appropriate to reproduce the Commissioner's findings on this aspect, since these have been challenged by the ld. advocate for the Respondent tht there is no estoppel against the Revenue in arguing against the said finding in support of his case while resisting the Appeal on other points.

In fine, I find that the stand of the Deptt. for raising a differential amount of Rs. 18,47,91,347/- is unsustainable for the following reasons :-

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a) Private costing recovered during the search can not form a basis for arriving at the correct "value" for all goods manufactured by M/s. Kitply.

b) Multiplying the entire clearance as reflected in the RG-I/RT-12 of the company by the highest price shown in couple of bills recovered is neither ethically acceptable nor arithmetically correct as huge stocks are still lying unsold in the depots on the day of the raid. It can not be taken for granted that they will all be sold at this highest price. At best, this is a mere presumption. Besides all clearances have not been sold at this highest price; this is a matter of fact as could be seen from bills produced by M/s. Kitply.

It is fact that some bills have actually shown high price, but it is also a fact that all bills have not shown the same high price and therefore the arithmetical calculation of Rs. 18,47,913/47/- is incorrect.

The position would be very different if the Department could prove with documentary evidence that there was a flow back. Had there been proof of some flow back, it could be concluded that the ex-factory sales price is unnaturally low and therefore unacceptable.

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c) It can not be disputed that the party have been filling their price lists from time to time alongwith bills of the depots. All these price lists have continued to be approved; unless it can be proved with documentary evidence that the sales from the depots are much higher even after giving admissible deductions the Department does not have sufficient evidence to hold that the price lists approved are incorrect.

d) In order to prove further that the ex-factory price is artificially low, investigation has conducted a special costing through the departmental Chartered Accountant for the years 1993-94 and 1994-95. As per this cost report the total cost is less than the corresponding total assessable value except for Tinsukia unit for 1993-94 in which the total cost marginally exceeds the total corresponding assessable value. Hence, even as per this report the declared assessable value is not unnatural.

e) Since the Department has not been able to prove with documentary evidence that the ex-factory price declared is artificially low, the claim of the party for applying the ratio of the decision in Indian Oxygen-vs-Commissioner, Central Excise as reported in 1983 (36 ELT-723) is acceptable.

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1.5 On the question of under-valuation to the extent of advertisement expenses and the notional interest on interest-free deposit of Rs.2 crores from Landle, the Commissioner upheld the allegations made in the show-cause notice. Commissioner's findings are that the statements of appellant's personnel, of Landle and of advertising agencies brought on record confirm that planning, monitoring, billing etc. of all advertisement activities of Landle were controlled and supervised by the appellant. Commissioner has also observed that had not the advertisement expenses been ~~not~~ incurred by Landle, the same would have been incurred by the appellant thereby enhancing the cost of the appellant's products and it would have resulted in higher assessable value at the factory gate. There is thus a direct nexus between the higher discount given to Landle by the appellant and the minimum quantity of products to be supplied to Landle by agreement with the latter on the one hand and the additional consideration of advertisement cost incurred by Landle which in the normal course would have otherwise been incurred by the appellant on the other hand. Hence the amount of duty, as alleged to be evaded on this count was confirmed by the Commissioner.

1.6 Similarly, in respect of additional consideration of notional interest on the interest-free security deposit made by Landle, the Commissioner has found that appellant's plea that deposit was taken as a security or as credit facility inasmuch as huge stocks of goods were sold to Landle is not correct because such a credit was not taken from other buyers and credit

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facility for a certain period was given to others as well.  
Hence the confirmation of alleged duty evasion on this account.

1.7 As regards sale of 'X' grade products as prime quality from seven depots for which evidence was adduced by the Revenue in the show-cause notice and there being no evidence in this respect with regard to sales from other depots, Commissioner has confirmed the demand of Rs.58,96,580/- on account of sales from those seven depots alone instead of much larger amount of evasion alleged.

Hence this Appeal before the Tribunal.

2.1.1 Ld. advocate, Shri V.Laxmikumaran for the appellant has submitted that it is apparent that the Commissioner has accepted the assessable value, as approved, at the factory gate. Once the price at the factory gate is ascertainable and has been accepted, question of any additional consideration does not arise. He further submits that once the price under Section 4(1)(a) is available and is not disputed, Revenue does not have the choice to consider the price at Depots/branches, as clearly ruled by the Apex Court in Indian Oxygen (supra). It is also not disputed that Landle has taken all the goods from depots at discounts higher than those available to other buyers/dealers. But this fact, he submits, is totally immaterial to the assessable value at the factory gate which is not disputed. All the goods cleared from the factory have invariably paid duty at that undisputed assessable value.

2.1.2 To elucidate the above submission, it is appropriate to reproduce the submission of the appellant in para C-7 of its Appeal memo, which was vehemently urged by the ld. advocate at

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the time of hearing :-

C.7 To explain it further it is submitted that the total sales made by the appellants during the period 1.2.90 to 31.3.94 is to the tune of Rs.363 crores. Out of this the sales made to Landle ex-depot was to the tune of Rs.120 crores. The appellants had they charged Landle for the sales made ex-depots at the same prices at which they sold to the dealers, i.e. extending only 20% discount instead of 25 to 45% discount, they could have charged and realised Rs. 148 crores (taking an average of 35% discount). Thus the appellants could have sold the goods at list less 20% discount being the price charged to dealers and recovered Rs.148 crores from Landle. However the appellants have charged and recovered only Rs. 120 crores from Landle. Thus the appellants have charged and recovered less by a sum of Rs.28 crores (the difference between the sale price to dealers vis-a-vis the sale price to Landle because of the higher discounts offered to Landle. The notice alleges and the impugned order confirms that the total additional consideration (advertisement plus interest) during the above period was to the tune of Rs. 25 crores. In otherwords if the entire transaction is looked into in the proper perspective it would show that the appellants have charged and recovered a sum of Rs. 120 crores plus 25 crores i.e. 145 crores from Landley. whereas they could have charged and recovered on the sale invoices itself a sum of Rs.148 crores from Landle (i.e. list price less 20% as charged to the dealers ex-depots). Hence assuming without admitting that the advertisement expenses and the alleged notional interest are to be considered as additional consideration, the same would not in any way affect the ex-factory price charged by the appellants. The impugned order is therefore liable to be set aside.

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2.1.3 Another shade of the aforesaid argument, put forward by the ld. advocate is <sup>the</sup> question of inclusion of advertisement expenses and notional interest could have justification if and only if the prices to Landle had been taken as the basis to form the normal price under Section 4(1)(a) and to arrive at the assessable value therefrom. Admittedly, submits the ld. advocate, the price to Landle or discount offered to Landle has not formed the basis to arrive at the assessable value. For this proposition, ld. advocate relies on Apex Court's judgement in the case of Metal Box India Ltd. Vs. Collector of Central Excise reported in 1995 (75) ELT 449.

2.2.1 Opposing the aforesaid contention, ld. advocate, Shri N.C. Roychowdhury for the Revenue submits that receipt of additional consideration in the form of advertisement expenses and the notional interest cannot be doubted at all. Advertisement expenses are incurred by a manufacturer in order to promote the marketability of his product. If any dealer/customer of a manufacturer undertakes advertisement activity to promote his sales, such advertisements would be within his area of sales and would prominently display his dealership. <sup>such advertisement activity</sup> be controlled and supervised by the manufacturer since manufacturer has nothing to do with this activity. No evidence has been brought forth by the appellant on record to the above effect to show that such advertisement activity was undertaken by Landle for his own benefit. On the other hand, ld. advocate Shri Roychowdhury has drawn attention to the agreement dated 26.11.90 between the appellant and Landle (Annexure A-18 to the show-cause notice). He has invited

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attention to various clauses relating to, sales promotion by Landle of the appellant's products, minimum quantum to be supplied by the appellant and to be lifted by Landle, permanent deposit of Rupees two crores without any interest liability of the appellant and the fixed discount on the price to be fixed by the appellant. We reproduce the following clauses, as pointed out by the ld. advocate for Revenue :-

1) The Company reappoints the second part and the second part agrees to act and work as company's distributor in the State of Maharashtra, Gujarat, West Bengal and Assam once again with effect from the 26th day of the month November 1980 for the promotion, popularization and sale of the products of the company in the said States particularly and any other parts of India on trial basis.

6) The second part shall work conscientiously, energetically and in a business like manner for the promotion, popularization and sale of the product of the company and shall not during the subsistence of its distributorship, work directly or indirectly for any manufacturers of the products and substitute products in any other part of India.

8) The second part shall sell the products of the Company, retail or wholesale, at any price negotiated by him, which however shall in no case be less than the minimum price fixed by the first part for each of the products of the Company. Such minimum prices shall be worked out to the second part by the Company after deducting all discount which ever agreed to be given for each product of



the first part considering the expenses for godown, delivery, discount and all other sales promotion expenses which the second part is required to undertake while effecting sales of the product of the first part.

9) The second part agrees to market following products of the first part in its area particularly mentioned in the agreement and at a fixed discount for the period for which this agreement is drawn. However, the price is subject to change as per policy of the Company of the first part.

Products	Discounts
Kitply	25%
Lohit Ply	25%
Shuttering Ply	25%
Fire guard	25%
Flush Doors	25%
DWP Cassio ply	25%
Decorative ply - Classic	15%
Decorative ply - Super	15%
Commercial plywood	15%
Commercial Block Board	15%
Marino Kitply X	45%
Kit Board X	45%

and any other items of new production mutually agreed between the first part and the second part at mutually agreed discount during the pendency of this agreement.

10) The first part agrees to supply to the second part in the State of Maharashtra, Gujarat, West Bengal and Assam the following quantity per month of different products and the second part agrees to procure order, take delivery and effect sale monthly for the undernoted quantity provided the first part maintains supply as agreed. In case first part fails to supply monthly quantity as agreed and vice versa then either of them will be liable for compensation to each other on their failure to fulfill their commitments between themselves for the supply and also for the expenses of the material by either party. The loss sustained will be equalised by the first part from the second part and vice versa to the extent of loss and damage sustained and incurred by them on account of their failure on each other.

*(Signature)*

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| 1) | Kitply-<br>Kitply X<br>Lohit ply<br>BWP Cassio  | 100 Trucks per month |
| 2) | Shuttering ply<br>Marino ply<br>Fire Board  | 10 Trucks per month  |
| 3) | Kit board<br>Kit Board X<br>Commercial Board<br>Decorative Board  | 15 Trucks per month. |
| 4) | Decorative plywood<br>Classic /Super  | 10 Trucks per month. |
| 5) | Commercial plywood  | 10 Trucks per month. |
| 6) | Flush doors as per order -  | 145 Trucks.          |
| 7) | Any other item and/or items<br>as above required for other<br>States other than Maharashtra<br>Gujarat, West Bengal & Assam | 10 Trucks (Optional) |

12) The second part for the sale promotion and popularization of the product of the company shall make sufficient expenditure on all India TV network and substantial amount will be spent by the second part for the promotion and popularization of the first part product. The first part will have a role to play in planning, advertising and execution of the same at the cost of the second part.

13) The second part will continue to keep permanent deposit of Rs. Two Crores (Rupees Two Crores only) with the first part as a security for the agreement for the due performance of the terms of this agreement and the said security will be with the first part as security and for the period this agreement remain valid. Such security will carry no interest for the total period of security. In case there should arise any dispute with respect of any matter regarding which any deduction is sought to be made by the first part, the said dispute shall be settled either between first part and second part amicably or shall be referred to the arbitration of a Solicitor company acceptable both to the first part and the second part which shall be conducted at Calcutta.

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2.2.2 Ld. advocate submits that perusal of the above clauses of the agreement do not leave by manner of doubt about the nexus of higher discount and a supply of minimum quantity per month stipulated against the consideration of advertising the appellant's products throughout India including on all India T.V.network and the permanent deposit without any interest liability on the appellant. He submits that charging of duty on additional consideration is sanctioned by section 4 and Central Excise Valuation Rules and has been upheld by the Apex Court in Metal Box (supra).

2.2.3 Ld. advocate, Shri Roychowdhury also attempted to plead, in rebutting the appellant's counsel's plea of genuineness of the price at factory gate having been accepted by the adjudicating authority, that the price at the factory gate is <sup>h</sup>artificially low. He pointed out that the adjudicating authority's findings are on vague evidences, without proper appreciation of the full or substantial evidence. We told him that this finding of the lower authority cannot be challenged in the appellant's Appeal, while there is neither any cross-objection from the Revenue against the present Appeal, nor any application (Appeal) under Section 35E of the Act.

3.1 We have carefully considered the pleas advanced from both sides on the issue of additional consideration received by the appellant by way of (i) advertisement expenses incurred by Landle and (ii) notional interest on interest-free deposit of Rupees two crores made by Landle. Price is a consideration for sale of the goods. Consideration may be received by the seller of the goods in terms of money or in other forms. When

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additional consideration, other than that ostensibly paid and received for the goods, is established, price ostensibly received or earlier approved price loses significance and that cannot form the basis of assessable value of goods under Section 4(1)(a). This is built in the terms of Section 4(1)(a) which places a condition on acceptance of the normal price i.e. the price in the course of wholesale trade at which the goods are ordinarily sold by using the expression "where price is the sole consideration for sale". When the goods are removed from its factory by a manufacturer at its depot (s) there is no sale of such goods and sale would be effected later from the depot (s). In truth, therefore, no sale-price at the time and place of removal of goods is available for those goods (being removed to depot). But for the purpose of convenience, price available for such (similar) goods had they been sold at the factory gate is taken, because duty is required to be charged in terms of rule 49 of the Central Excise Rules 1944 when the goods are removed from the factory. If the goods are subsequently sold at depots, without any additional consideration, that is the end of the matter, because price at the factory gate cannot be said to have been influenced by any additional consideration and price at the factory was the sole consideration for sale. It is in the absence of any allegations, in Indian Oxygen (supra) regarding sales at depots, on additional consideration, that the Apex Court decided that if the price at the factory gate under Section 4(1)(a) is available, one need not go to the price at Depot. But the factual situation in the present case is totally



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different. There is a subsisting agreement between the appellant and Landle for supply of a minimum quantity of the goods per month at a fixed discount which is admittedly far higher than the discount given to other dealers in consideration of the advertisement and interest-free deposit of rupees two crores. Therefore, price of goods for supply to Landle (though not specifically earmarked as such at the <sup>paid</sup> of removal from factory) is vitiated ab-initio at factory gate by virtue of the terms of the said agreement on the ground that the sale-price at the factory gate has not taken into account the additional consideration <sup>being</sup> following back to the appellant/manufacturer.

3.2 The fact that expenses incurred on advertisement by Landle, <sup>at</sup> at All India level T.V. net work which would have otherwise been incurred by the appellant and benefit of interest earned by the appellant by a huge interest-free deposit made by Landle, had it taken a loan from some financial institution to meet its working capital requirement for fulfilling the committed supply to Landle are patently additional consideration for supply <sup>of</sup> a minimum quantity of goods at higher discount. This is amply proved by appellant's own facts and figures given in para C7 of its Appeal extracted in para 2.1.2 above. It shows that the appellant has given extra benefit of about Rs.28 crores to Landle as compared to other dealers and in lieu thereof has got a benefit of about of Rs.25 crores. Difference of Rs.3 crores, it can be argued, is a genuine discount to Landle for his committed sales at a much

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her level than any other dealer. This finding is strengthened by Apex Court's following observations in Metal Box (supra) :-

10. So far as contention No. 2 is concerned, it is true that Ponds (I) Limited was almost a wholesale buyer of the appellant's goods, namely, metal containers manufactured by it as it was lifting 90 per cent of the total production of the appellant. For that purpose huge amounts were being advanced free of interest by Ponds (I) Limited to the appellant. When Ponds (I) Limited was given 50 per cent discount from normal price then the material aspect that Ponds (I) Limited had advanced large amounts free of interest had necessarily entered into consideration between the parties. Therefore, special treatment was given by the assessee to Ponds (I) Limited. It has to be appreciated that if Ponds (I) Limited had not given these amounts, the appellant would have been required to borrow these amounts for purchasing raw materials and other accessories from outside like banks etc. and would have been required to pay large amounts of interest which naturally would have got reflected in the purchase price to be charged from the buyers as it would be a part of cost of production which was to be passed on to the customers of the appellant's goods. It has been laid down by Section 4(1)(a) that normal price would be price which must be the sole consideration for the sale of goods and there could not be other consideration except the price for the sale of the goods and only under such a situation sub-section (1)(a) would come into play. If the price in a particular transaction is not the sole consideration flowing directly or indirectly from the buyer to the assessee-manufacturer, either in cash or any other form, the additional consideration quantified in terms of money value is to be added to the price declared by the assessee for determining the normal price of the goods. In these circumstances the Tribunal was perfectly justified in upsetting the decision of the Collector and confirming the decision of the Assistant Collector when the latter held that notional rate of interest on the advances given by the wholesale buyer, Ponds (I) Limited, to the appellant should be reloaded in the price so as to reflect the correct price of the goods sold by the appellant. The Tribunal was right when it considered the fact that after agreement entered by the appellant with Ponds (I) Limited, the appellant got large amounts of Rs. 75 lakhs in 1980, Rs. 100 lakhs in 1981 and Rs. 200 lakhs in 1982 free of interest and these advances were maintained at the same level on the first working day of every month as specifically provided for in the agreement column 9 as the special agreement between the parties and it had a direct

Impact on the pegging down of purchase price which ultimately was charged by the appellant from the wholesale buyer, Ponds (I) Limited. The said price charged by the appellant from Ponds (I) Limited could not be said to be normal price of containers on account of extraneous reason, namely, that a favoured treatment was given to Ponds (I) Limited which had given such large amounts to the appellant free of interest for purchasing raw materials and accessories for manufacturing the containers which were ultimately sold by the appellant to Ponds (I) Limited. The Tribunal has also noted the reasoning of the Assistant Collector on this aspect to the effect that the extent of such deduction in the price can reasonably be attributed to the interest amount payable on the advance which had M/s. Metal Box India Limited obtained from any other source with interest bearing loan, would have been loaded on the cost of manufacture and sale price of the metal containers naturally increasing the concessional price charged from Ponds (I) Limited.


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3.3 We may record another argument of the appellants, that is, Landle's advertisement expenses were for his own benefit and only an incidental benefit flowed to the appellant and therefore, relying on some citations further argument that as such these expenses would not form part of additional consideration is not tenable in the face of the agreement and as also not substantiated by any evidence from the appellant's side.

3.4 We, therefore, hold that additional consideration in respect of sales to Landle is established. Consequently, the real price for sale of goods to Landle will be the price at which duty was originally paid plus the additional consideration flowing to the appellant from Landle.

3.5 One constant refrain in the Appeal memo and also during the course of arguments at the time of hearing of the Appeal has been that assessable value on which duty has been paid is not based on price paid by Landle and, therefore, any additional consideration, if any, received from Landle cannot be added to that assessable value for the purpose of charging Central Excise duty. Such an accretion of additional consideration could be made if and only if the assessable value had been based on price paid by Landle. We are afraid that there is a fallacy in the argument. Object of Section 4 is to determine assessable value for the purpose of charging Central Excise duty on goods which are liable to duty on ad-valorem basis. Sale price of the goods in the course of whole-sale trade where price is the sale consideration is the basis of

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determining such value under Section 4(1)(a). This section also provides that different prices can be charged from different classes of buyer. Landle is undisputedly a bulk buyer of the goods manufactured by the appellant. Landle, therefore, forms a separate class of buyer, as held by the Apex Court in Metal Box (supra) - para 12 thereof. The Apex Court held therein as follows :-

" The buyer who purchases small quantities of goods may stand in different class as compared to a buyer who purchases 90% of manufactured goods. He would certainly form a separate and distinct class".

We also observe that the agreement does not provide that he must purchase the goods from depots only. All it says, inter-alia, that a certain minimum quantity of goods per month manufactured by the appellant has to be supplied to Landle. There is no restriction on further purchases. Being a bulk buyer and thereby forming a separate class, the appellant is entitled to charge a lower price from Landle different from other buyers. But the price should be a genuine price and not a depressed price due to other conditions, because the over-all condition placed in Section 4 (1)(a) namely, "price being the sole consideration for sale" should permeate all sale transactions. It is in view of this conditionality in Section 4(1)(a), that additional consideration flowing back from the buyer to the appellant is required to be added and has been added to make the prices charged from Landle as being the sole consideration for sale. Such addition will not affect the sale transactions with other buyers of the appellant.



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3.6 We do not, therefore, find any reason to interfere with the findings of the Commission<sup>on</sup> on charging duty on 'additional consideration' flowing back to the appellant from Landle both on account of advertisement expenses incurred, and interest free deposit of Rs.2 crores made, by Landle except to the extent that duty confirmed by the Commissioner to the tune of Rs.48,48,500/- is incorrect and it cannot exceed the amount of Rs.43,43,500/- shown in the show-cause notice. Only the later amount of Rs.43,43,500/- is liable to be paid by the appellant and not Rs.48,48,500/- on account of notional interest.

4.1 As regards the amount of duty confirmed for selling "X" grade goods at higher prices applicable to normal/<sup>me</sup>price grade of goods from seven out of 22 depots, we observe that the main thrust of the appellant's argument is that allegation made in the show-cause notice that "X" grade was a ruse to clear and sell the prime quality of goods and that there was an evasion of duty of Rs.9,81,77,589/- has not been accepted by the Commissioner in the impugned order. Existence of two grades has been admitted. Mixing up, "X" grade and normal grade has taken place only in<sup>7</sup> out of 22 depots and, therefore, demand has been reduced to Rs.58,96,580/- . It has been urged against confirmation of this demand that existence of two grades having been accepted and sale price and clearance of "X" grade having been accepted by the Commissioner under Section 4(1)(a), the department is estopped from following sale prices of those at depot and, therefore, the demand is not sustainable. We do not agree with this contention. Appellant has not denied that so-called "X" grade goods cleared from the factories for the seven

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depots in question were mixed up along with non-"X" grade goods and all goods from those seven depots were sold as non-"X" grade. It is, therefore, doubtful whether the so-called "X" grade cleared to the seven depots and sold therefrom were really "X" grade goods. Appellants's argument to confine the question of sale of "X" grade to valuation alone is not correct. The question is of misdescription in the quality of goods cleared from the factory for sale from the seven depots. In our view, the demand is sustainable.

4.2 A half-hearted attempt has also been made to plead that this demand is barred by time on the ground that a similar allegation was made in the some earlier proceedings but with reference to Kitply marine grade and defective marine grade. The present allegation is with reference to the Kitply "X" in place of defective marine grade. There can be no question of time bar in the facts and circumstances of the case. It is not the case of the appellant that it had declared to the department or brought to the latter's knowledge any fact to the effect that it is selling "X" grade goods from the seven depots as normal goods and yet the department accepted the lower price of the "X" grade goods.

5.1 As regards the penalty on the appellant-Compay, we find sufficient justification for the same because the devious method adopted to cause huge evasion of duty on the above counts - particularly on the question of additional consideration. Penalty of Rupees one crore cannot be said to be excessive in view of the huge evasion.

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5.2 Penalty on Shri P.K. Goenka, as Managing Director is also justified as he was fully aware of the additional consideration received from Landle in terms of the agreement executed between the appellant and Landle. Penalty of Rs. 1 lakh imposed on the Managing Director is also quite reasonable. We would not, therefore, like to interfere with the same.

6. In short, both the Appeals - of Kitply Industries Ltd. and of Shri P.K. Goenka - are rejected except to the extent of demand of Rs. 5,05,000/- (Rupees five lakhs and five thousand only) mentioned in para 3.5 above.

*Separate order*  
(ARCHANA WADHWA)  
MEMBER (JUDICIAL)

*(P.C. JAIN)*  
(P.C. JAIN)  
MEMBER (TECHNICAL)

CALCUTTA  
DATED :  
(mm)

Per Smt. Archana Wadhwa.

7. I have gone through the order proposed by my 1d. brother, Shri P.C. Jain, M(T). With respect, I do not agree with the views expressed by him and propose to record a separate order as under :-

8. The facts of the case have been detailed by Shri Jain in the Order and as such are not being repeated by me except, wherever necessary.

9. Dealing with the first portion of the demand of duty of Rs. 7,05,95,368 confirmed by the adjudicating authority by including the advertisement expenses incurred by one of the appellants' dealers, M/s. Landle & Co., it has been the appellants' stand that the factory gate price

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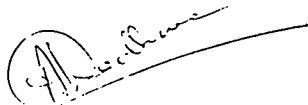
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under section 4(1)(a) having been accepted by the Commissioner, it was not open to her to go beyond that and made the ex-depot Sales to M/s. Landle as the basis for arriving at the assessable value. It is seen that one of the charges in the Show Cause Notice was that the appellant had been indulging into under-valuation and with a view to evade Central Excise Duty had deliberately established a price at their factory gate by selling 10% of their total production from the factory gate. Notice proposed to recover duty allegedly short paid on this count to the extent of Rs.18,47,91,347.00 for the period Feb,1990 to June,1994. However, The Commissioner, in her impugned order, has dropped the said charge against the appellant and consequently the proposed demand by observing that the department has not been able to prove that the ex-factory price was unnaturally low. She has concluded that since the Department has not been able to prove with documentary evidence that the ex-factory price declared is artificially low, the claims of the party for applying the ratio of the decision in Indian Oxygen V/s. Commissioner of Central

Excise as reported in 1988(36)ELT 723 is acceptable. The conclusion of the Commissioner and the basis for the same have been reproduced on pages 5 & 6 of the Order of the Ld. Technical Member. The question which arises is that having accepted the genuineness of the ex-factory price declared and approved by the appellant, the Commissioner was justified in going one step further and increase the assessable value in respect of sales made to M/s. Landle by including the advertisement expenses made by the said dealers. As per records, only 10% sales have been made at the factory gate. These 10% sales have been made the basis

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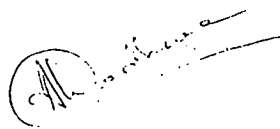


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for the assessable value in respect of remaining 40% sales made to other dealers from the factory gate. It is very important here to take note of the fact that the department has not disturbed the assessable value of the goods sold at higher rate to other dealers from the appellants' depots. Merely because M/s. Landle picked up remaining 50% of the product from the depots under a duly executed agreement and a higher discount from the price-list higher than that what was being offered to others, has been given to him, does not make him stand on a different pedestal. The factory gate value has not only been accepted in 10% of the sales but by adopting the same in respect of ex-depot sales to 40% of the other dealers is deemed to be based on 50% of the total sales. If the assessable value in respect of sales to the extent of 50% is available at the factory gate (by taking into consideration adoption of the same in respect of other dealers who purchased their goods from the depots) there is no reason why the same value should not be made the basis for charging duty in respect of sales to M/s. Landle by applying the principle enunciated by the Hon'ble Supreme Court in the case of M/s. Indian Oxygen

Ltd. cited supra and heavily relied upon by the appellant. The said decision of the Apex Court has constantly been followed by the Tribunal in a number of cases and it has been held that once factory gate price is available, the same is to be made the basis for the sales through depots. The appellant in their reply to Show Cause Notice have contended that actual price of approximately 50% of their sales through depots/stockists when worked back is more or

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less equal to the price of the ex-factory price. It was also pleaded by the appellants counsel during hearing that if the price charged from Landle is made the basis for charging excise duty, the assessable value, after allowing the admissible deductions would come either equivalent or less than the ex-factory price. The Commissioner has simply picked up the advertisement expenses incurred by M/s. Landle and demanded duty on the same, which is not the correct method. I agree with the observations of my Ld. brother that in-built provision in section 4(1)(a) makes the acceptance of factory gate sale price as the assessable value for sales through depots also subject to the condition that price is the sole consideration for sale and there is no additional flow back to the manufacturer. The question which arises is: whether the advertisement undertaken by M/s. Landle can be said to be an extra consideration for the goods purchased by him. It is not as if the entire advertisement of the product is done by the said dealer. The appellant are also doing a lot of advertisement on their own account through TV Network and other media and incurred an expenditure of substantial amount which the appellant had reflected in their cost sheets. This stand of the appellant taken by the appellant before the adjudicating authority has not been rebutted by

the department either in the order or during hearing before us. From the records, it appears that M/s. Landle is a public Limited Company and as a separate legal entity has entered into an agreement with the appellant for the marketing of their product sold to them on principal to principal basis. The said agreement as contended by the appellant is registered with the Registrar of Companies and Sales Tax authorities etc.

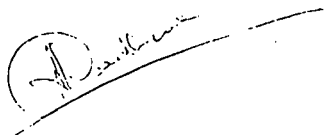
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The advertisement done by M/s. Landle certainly benefitted him also as dealers. Apart from promoting the product of the manufacturers, dealers's goodwill also gets enhanced and in turn, his business goes up. It is not unknown for dealers to advertise their business activities so as to attract more customers and to increase their business. As observed by the Tribunal in the case of M/s. Hero Honda Motors Ltd. vs. Collector of Central Excise, New Delhi, reported in 1997(19)RLT 842(CEGAT-SB), when the dealers advertise, in the absence of anything else on record, it cannot be said that the cost of such advertisement which also in a way enhances the marketability of the product should be added to the assessable value. I am mindful that the above finding is qualified with the expression 'in the absence of anything else'. As such, it is to be examined as to whether there is any other evidence on record which inspires the conclusion that advertisement undertaken by M/s. Landle was, in fact, undertaken by him for and on behalf of the appellant with ulterior motive of benefitting the appellant with the lower assessable value. The department in support of their stand has relied upon two-three factors; that M/s. Landle has given 2 crores interest free deposit to the appellant, that they are the bulk purchaser of the appellant's products, that discount higher than what is being offered to other dealers has been given to M/s. Landle. Reliance has also been placed upon some of the terms of the agreement between the two to show that it was almost compulsion for M/s. Landle to undertake the advertisement and the control for such advertising activity was in the hands of the appellant.

10. I propose to deal with all the above points one by one. Interest free deposit of Rs.2 crore has been explained by the appellant as a security towards any future default in paym-

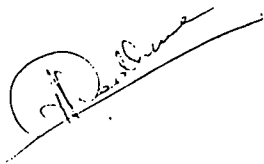
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ent by the said dealer. Explaining this in their reply to show cause notice, the appellants have stated that "as per general practice of the trade, 90 days credit is also given to M/s. Landle. However, in order to ensure to some extent that payments are made for goods lifted on credit by M/s. Landle, an amount of Rs.2 crores has been taken in one time but in fact, the goods lifted in a month on credit by M/s. Landle are more than Rs.2 crores. Therefore, this is only a method of pre-payment of part of the value of goods lifted by them". In view of the above un-rebutted explanation and the fact that M/s. Landle is marketing almost 50% of the appellants' product and the sales to him are in crores, (as explained in para C.7., Sales during the period 1.2.90 to 31.3.94 to M/s. Landley were to the tune of Rs.120 crores), a pre-deposit of Rs.2 crore can't be made the basis for establishing any link or nexus between the two. Every manufacturer would safeguard his interest in any business deals. Amount of Rs.2 crore may seem huge when considered in absolute terms, but relative to the total sales to Landley, it makes only small percentage. The revenue has also raised another point that no such deposit was taken from any other dealer. I accept the appellants' explanation that the other dealers being small and lifting little quantities at one time, there is no danger of the dues becoming irrecoverable from them.

11. The dealers M/s. Landley being the bulk purchaser of the appellants' goods is no reason for adding the advertisement expenses incurred by M/s. Landley into the assessable value. The two have entered into an agreement based on principal to principal basis incorporating the entire terms and conditions therein. It is not the department's case that the two are related to each other or the agreement between the two is not

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genuine.

12. Similarly offering higher discount from the list price to M/s. Landley only reflects the normal business practice. As the Landley were lifting and marketing half of the appellants's products, they were bound to be on different platform than the rest of the dealers. The question which may arises is as to whether the higher discount offered to Landley has any nexus with the advertisement done by them. From the figures of sale given by the appellant in their ground C-7 of memo of appeal and reproduced by my Ld. brother in his order, shows that during the period 1.2.90 to 31.3.94, out of the total ex-depot sales of Rs.363 crores, sales made to Landle were to the tune of Rs.120 crores. Now if the appellant would not have offered higher discount to M/s. Landle, they would have charged Rs.148 crores, and the difference of 28 crores, they would have spent from their own pocket out of the realised Rs.148 crores towards advertisement expenses. In such a situation, the department would not have challenged the sale price to Landle being at 20% discount from the list price and being equivalent to the price at which the product is sold to other dealers in as much as the department has no objection to the sale price to other dealers at 20% discount. The ex-factory price list also stands approved based upon the factory gate sales to independent buyers at the place and time of removal, which has been found to be genuine by the adjudicating authority. The same is not based on the cost data in terms of rule 6(b)(i) of the Central Excise Rules, 1975 and as such, the advertisement expenses incurred by the appellant would not have formed the basis to upset the factory gate sale which satisfies the ingredients of main section 4(1)(a), we have to keep in mind that it is not a case where appellants are asking for deduction of advertisement expenses.

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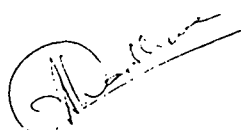
expenses incurred by them from the price charged by them for the purpose of arriving at the assessable value. Hence, the department is seeking to enhance the approved assessable value by demanding duty on the advertisement expenses incurred by the appellants' one of the dealers. The provisions of Rule 6(b)(i) can be resorted to only when the assessable value cannot be arrived at in terms of the main section 4 or the preceding rules of valuation Rules.

13 In the background of the above discussions, I would like to discuss the relevant precedent decisions on the issue involved. In the case of M/s. Havmore Ice-cream Company Vs. Collector of Customs, Ahmedabad reported in 1996(16)RLT524(CEGAT.A), (I was one of the Members) it was laid down that the advertisement expenses incurred by the distributor after the purchase of the goods is not to be added in the assessable value. In the said case also, the distributor had kept interest free deposit of Rs.5 lakhs with the manufacturer and the assessee was to compulsorily sell 90% of their goods to the distributor. In the said case, the two partners of the appellant firm were the wives of the two directors of the distributor company whereas there is no such allegation in the instant case. As such, the present case stands on a better footing.

14 In the case of Regency Ceramics Ltd. Vs. Commissioner of Central Excise, Guntur reported in 1996(16)ELT806(32B), the agreement entered into by the manufacturer and the dealer, a condition precedent for appointment was that the local advertisement charges are to be borne by the dealers as per the guidelines of the manufacturer. Clause 9 of the agreement in the said case of Regency Ceramics Ltd. read as under:-

"You shall arrange display of our product at various places in

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the assigned area at your cost as per our guidelines and also give wide publicity/advertisement of the product in the assigned area at your cost in an attractive manner. The corporate advertisement will be carried out by the Company at our cost"

The Tribunal held as Under:-

"From this condition it can never be held that the sale to the dealers is not on principal to principal basis. The agreement between the appellants and the dealers is on principal to principal basis. The appellants and their dealers had mutual interest in making sale of the products in question. In the above view the above clause relating to advertisement were in furtherance to the said discount on the part of the appellants and their dealers and had in no way affected the resulting nature of the transactions which is the sale on principal to principal basis. Therefore the above cited decision of the Divisional Bench of the Calcutta High Court squarely applies to the facts of this case. In that view of the matter the demand of duty and the imposition of penalty is not in accordance with law. We set aside the same. The appeal is accordingly allowed."

In the instant case, Clause 6 of the agreement is the one which enjoins a duty on the dealer to act for the sale promotion of the product. Though reproduced by Ld.Member(Technical) in his order, I would like to reproduce the same here for better appreciation and ready reference:-

6. The second part shall worth conscientiously, energetically and in a business like manner for the promotion, popularisation and sale of the product of the Company and shall not during the subsistence of its distributorship worth directly

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or indirectly for any manufacturers of the products and substitute products in any other part of India.

The above clause cannot be construed as cash flow to the appellant in the shape of advertisement expenses incurred by them. As observed by the Hon'ble High Court of Calcutta in the case of Union of India Vs. Mahindra and Mahindra Ltd. 1989(43)ELT 611(Cal), the manufacturers and its distributor had a mutual interest in maximising the sales of the product the advertisement is in the nature of furtherance of the interest of both the manufacturer and the dealer and such a provision in the agreement cannot effect the nature of the sales on principal to principal basis.

15. To the same effect is the decision of the Hon'ble Supreme Court in the case of Philips India Ltd. Vs. Collector of Central Excise, Pune reported in 1997(19)RLT471 S.C.. It has been observed in para 5 of the said judgement that the advertisement which the dealer was required to make at its own cost benefitted in equal degree the appellant and the dealer and that for this reason the cost of such advertisement was borne half and half by the appellant and the dealer and making deduction out of the trade discount on this account was, therefore uncalled for. In the instant case, though the advertisement expenses incurred by the dealer have not been shared by the appellants, but the appellant has, on its own incurred expenses towards advertisement of its product. As such, the ratio of the said decision applies and the advertisement expenses of the dealer cannot be made liable to duty.

16. Reference is also made to the decisions in the case of

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M/s. Raymond Woolen Mills Vs. C.C.E. Pune 1997(20)RLT 251(SB) and Delstar Private Ltd. Vs. Collector of Central Excise, Pune reported in 1997(20)RLT 374(CEGAT S.B.) which are also to the effect that advertisement cost of the dealer cannot be added to the assessable value. There is no idea in lengthening the judgement by reproducing the relevant paragraphs or by referring to the facts of the each case. <sup>Sufficient</sup> Suppose is to say that it is settled law that advertisement ~~done~~ by dealer is for the benefit of both and cannot be taxed by adding to the assessable value especially when the factory gate sale price is available and has been applied in respect of other dealers. The appellant, during the course of their submissions had submitted and in my views, rightly so that the basis for arriving at the assessable value in the instant case is factory gate sale to which the department has sought to add the entire advertisement expenses incurred by their dealer Landle. The Advocate's contention is that <sup>on the basis</sup> for assessing the value for the purpose of duty been the price charged from Landle, calculating backwards after allowing the admissible deductions under the law, the assessable value would have been less than the ex-factory assessable value at which they have paid duty. The above calculations are not before us but if the appellants' contention is true, then they are the losers by paying duty at higher assessable value on their clearances. The department cannot pick up the ex-factory price and add to it the advertisement expenses of the dealer and demand duty.

In view of my foregoing discussions I hold that the

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(M. A. S.)

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advertisement expenses incurred by the dealer cannot be subjected to duty by adding the same in the assessable value of the product and accordingly set aside the part of the impugned order confirming demand of duty of Rs.7,05,95,368.00.

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17. As regards the confirmation of demand of duty of Rs.

Rs. 48,48,500

on the interest on deposit made by M/s. Landle, Ld. brother Shri P.C.Jain, in his order, has held the same to be legal by relying upon the Apex Court judgement in the case of Metalbox.

The ratio of the said judgement can be applied to the facts of the instant case only when it is shown and proved that there is nexus between the sale price and the advance given by the dealer. If the prices have been depressed because of the advance free interest, then certainly the same is an additional consideration flowing back to the manufacturer being towards the price of the sold goods. Reference in this connection is made to the Tribunal's decisions reported in 1996(15)RLT 697(A) in the case of Triveny Engineering Works Ltd. Vs. Commissioner of Central Excise, Allahabad and in the case of M/s. MIL Controls Ltd. Vs. Commissioner of Central Excise, Cochin reported in 1997(19)RLT 681(CEGAT-SZB). Now the two factors required to be looked into in the instant case are (a) as to whether the ratio laid down by the Hon'ble Supreme Court in the Metal Box case is applicable to the facts of the case under consideration and (ii) whether the deposit of Rs.2 crores by Landle free of interest has influenced the sale price to the said dealer

Taking the first issue first, it is seen that in the case of Metal Box, the facts were slightly different. The

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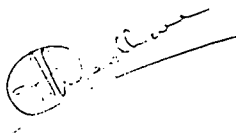


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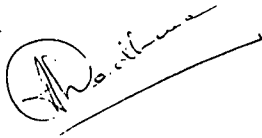
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facts, as detailed in the Tribunal's order [1995(6)RLT 527(CEGAT-A)] are that M/s. Metal Box were supplying their product metal containers to different cosmetic manufacturers including M/s. Ponds (I) Ltd. and the price declared was on the basis of contract/purchase orders of the buyers. The price so declared and claimed for approval in respect of each buyer i.e. cosmetic manufacturer was after claiming certain deductions from the <sup>gross</sup> goods selling price. Disparity between the price adopted for M/s. Ponds (I) Ltd. and other cosmetic manufacturer/buyers were noted by the department and on investigations conducted, it was found that prices were suppressed for the said buyer as high interest free deposits have been made by M/s. Ponds India Ltd. to be used by M/s. Metal Box for specific purpose of covering raw and ancillary material and keep them in stock sufficient to meet minimum 3 or 4 months requirements of the buyers namely M/s. Ponds India Ltd.. It was in these circumstances that it was observed by the Tribunal and confirmed by the Supreme Court that price charged by the appellant from Ponds (I) Ltd. could not be said to be normal price of containers on account of extraneous reasons. The facts are different in the instant case. The price claimed and at which duty has been paid by the appellants in respect of sales made to M/s. Landley is not contract based price. It is not that M/s. Landley and the appellant had entered into a contract prior to the manufacture of the goods for the purpose of manufacture of tailor made goods as per the requirement or specification of M/s. Landley and for the purpose of production of those goods, advance has been given to M/s. Kitply for

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utilization towards the cost of raw material or other ancillary material. There is no purchase order by M/s. Landle on the appellant. Neither is the price charged by appellant from M/s. Landle has been made the basis for assessment. Had the price changed from Landle after the discounts given by the appellant been claimed by them as assessable value, there was occasion for the department to look into the aspect of depression of price. It is not to be forgotten that duty has been paid on the value assessed under the main clause of section 4(1)(a) as normal factory gate price and the goods have been transferred to Depots by adopting the same assessable value. From the depots, the goods have been sold to various dealers including M/s. Landle by offering various discounts. The varying quantum of discounts to different dealers from the depots does not, in my views, lend any support to the department's stand that the prices changed from Landley are depressed as higher discounts have been given. The assessable value at which duty has been paid has not been arrived at by the appellants after claiming deduction of higher discount given to Landley. The same assessable value at the factory gate has been accepted by the department in respect of other dealers. As such, whether the goods are subsequently sold to various dealers by higher discounts or by lower discounts cannot be made the basis for re-determining the assessable value. The effect of demanding duty on the interest on the advance deposit is re-opening and re-determination of the otherwise approved assessable value in so far as one dealer is concerned. This is the basic difference between the Metal Box case and the instant case. Whereas different prices charged from different buyers was the basis for arriving at the factory gate in Metal Box case (as the price list was filed in part II), the same is not the situation here.



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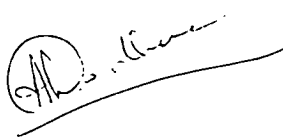
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Prior Order

Next, it is to be seen as to whether this deposit of Rs.2 crores has, in any way influenced the sale price to M/s. Landley or the same is to be considered as security deposit towards any future default of payment by the dealer, who is lifting sufficient quantities of plywood from the appellants' depots. This question, in fact, is not important, the duty having been paid at the assessable value as ascertainable at the factory gate and found to be genuine by the adjudicating authority. Nevertheless, on going through the terms of the agreement, I find that the amount of Rs.2 crore was in the nature of security to the agreement, clause 13 of the agreement (reproduced at page 13 of the order of Member(T)) clearly stipulates that the second part will continue to keep permanent deposit of Rs.2 crores with the first part as a security to the agreement for the due performance of the terms of this agreement and the said security will be with the first part as security and for the period this agreement remain valid. The appellants in their reply to the show cause notice had submitted that as per the general practice of the trade, 90 days credit is also being given by them M/s Landle and one time deposit of Rs.2 crores has been taken only to ensure payment of goods lifted by Landle. They have also asserted that goods <sup>lifted by Landle</sup> lifted by Landle. They have also asserted that goods lifted in a month on credit by M/s. Landley is more than Rs.2 crore. This submission of the appellants has not been rebutted by the department. The higher discount to Landle only reflects the normal practice of offering more discount to the bulk buyer of the goods, a practice taken note and approved by the Supreme Court in the case of Metal Box.

The demand of duty of Rs. 46,115,374/- confirmed on this ground is not legally sustainable.

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18. I would like to express my opinion here about the appellants' agreement dealt in para 3.5 of the order proposed by my Ld. brother. I agree with his views which are based upon Metal Box decision that M/s. Landle being bulk purchaser of goods ~~from~~ a separate class of buyers. And being a bulk purchaser, the appellant is entitled to charge a lower price from him by offering higher discount but such a price must be free from any additional consideration flowing back to the appellant or benefitting him in the shape of adv. expenses or interest charges. These benefits, if at all arising, would be added to the assessable value, only when assessable value is being arrived at by taking the sale price to Landle as the starting point. The same cannot be added directly to the ex-factory price and duty demanded thereon. The appellants had submitted several bills before the adjudicating authority, as mentioned on page 31 of the order, to show that after allowing admissible deductions from the depot price, the assessable value work out to more or less the same price as ex-factory sales price. There is no comment of the Collector on this submission of the appellants. Either the ex-factory price has to be adopted for sales to depots or the sale price from depots to the dealer has to be picked up and worked backwards <sup>to</sup> arrive at the assessable value after allowing the admissible deduction. Expenses incurred on advertisement and interest on advances cannot be straight away added to the admitted ex-factory price in respect of one dealer. I find sufficient force in the arguments of the Ld. Adv for the appellant made in this respect.

19. As regards the demand of duty of Rs. 58,96,580/- confirmed on the ground of misdeclaration in the quality of the goods cleared as 'x' grade from the factory and sold as good quality grade from seven sale depots. I fully agree with the

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views expressed by Id.Member(Technical). Accordingly, duty of Rs.58,96,580/- is confirmed against the appellant.

20. As regards the limitation the appellants have submitted that the earlier show cause notices dt.9.10.85 and 9.4.89 issued to the appellants [when it was known as M/s. Sudharshan Plywood Industries Ltd. and Art Plywood Industries Ltd. as the same were merged and named as Kitply Industries Ltd. effective from 5th April 1989] on the similar allegations were quashed by the Hon'ble High Court of Assam by their order dt.16.2.1995. The appellants have contended that the impugned show cause notice dt.28.2.95 issued for the period Feb-1990 to June-1994 is hopelessly barred by limitation in as much as the extended period of five years is not available to the department in view of the knowledge of all the facts to the department as reflected in the earlier show cause notices issued by the department. The appellants in their memo of appeal has listed the similarities in the earlier notices and in the present notice as under:-

Earlier show cause notices

Present show cause notice

ON UNDERVALUATION

The noticee company made a token ex-factory sale on fictitious assessable value.

The noticees created a small percentage of sale at factory gate at very low price.

Noticees sold only 2.5% at ex-factory and the remaining through depots.

The noticees sold around 10% ex-factory and 90% through depots.

Noticees charged and realised extra amounts over and above the declared ex-factory price for sale at the Depots.

Noticees sold the goods ex-depots at very high prices as compared to ex-factory.

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The company declared the value less than the cost.

The purported factory gate sale value is less than the cost.

### ON ALLEGATION OF SUBSTITUTION

Noticees had removed prime quality Kitply marine grade under the garb of marine plywood by deliberate misclassification.

Kitply prime quality misclassified as Kitply-X (II grade).

Noticees removed Kitply marine grade in the guise of defective marine grade.

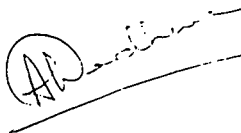
The noticees removed Kitply prime quality in the guise of Kitply-X (II grade).

While quashing the said show cause notices, on a petition by the appellants the High Court of Assam held, vide their order dt.15.2.1995, as under:-

"Accordingly I hold as follows —

- (i) Once the price list is approved and it is subjected to adjudication by a judicial authority, the same cannot be revised and / or modified without following the due process of law. In issuing the show cause notice in the instant case, the due process of law was not followed by the authority.
- (ii) In order to entitle the Department to issue show cause notice in the absence of any amendment in law, the department can issue notice only when it finds that the person concerned is guilty of suppression of material facts or misstatement or misrepresentation.
- (iii) When the factory gate sale is admitted, the Department is duty bound to assess the tax on the basis of the factory gate sale as provided under Section 4(1)(a) of the Act."

Challenging the present proceedings as time bar, the appellant has drawn attention to their ground No.I.4, which is as under:-



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✓ The demand on this account is also liable to be set aside on the question of time bar. A similar allegation was made in the earlier proceedings but with reference to the Kitply Marine grade and defective marine grade. The present allegation is with reference to the Kitply x in the place of defective marine grade. But for the description of the goods, the allegation remains one and the same. When all the facts are available with the Department and the further fact that the sales are made from the depots at a higher price and having come to the conclusion that the sale price ex-depot is not relevant, in as much as the ex-factory price is genuine and acceptable, there being no suppression of any material facts, the impugned proceedings are liable to be hit by time-bar. Even though the question of limitation was specifically raised by the appellants, the Commissioner has not given any findings on this aspect. Since the question of Limitation has been specifically raised and the Commissioner has no rebuttal, it is to be construed as a clear admission/ acceptance of the knowledge of the facts and the application of limitation. In view of the silence itself on the point of limitation raised by the appellants, the impugned order is liable to be set aside and the demand also set aside on time bar.

It was argued that the department was in knowledge of the fact that sales was made at higher price from the depots and show cause notices were issued on that basis. Having held that ex-depot price being genuine, the duty is to be paid on that basis, these cannot be said to be any suppression on the part of the appellant. The Hon'ble Supreme Court in a number of cases

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(A)

has interpreted the proviso to section 11-A of the Central Excise Act, 1944 and has held that bonafide or intention to evade duty is the main criteria for invoking the larger period of limitation. From the comparison of the allegations made in the impugned show cause notices which were the subject matter of litigation before the Assam High Court I find that the allegations are more or less similar in nature. The fictitious character of the excisable value was doubted by the department in both the proceedings and it was alleged in the earlier show cause notice that a token ex-factory sale has been made by the appellants to establish their normal ex-factory price in terms of provision of section 4. The allegation of charging or realising extra amounts over and above the declared ex-factory price for sale on the depots was also alleged in the earlier show cause notices. The earlier show cause notices were quashed by the Hon'ble High Court by observing that when there was a factory gate sale price as provided under section 4(1)(a) of the Act, the department was duty bound to assess the tax on the basis of the same. Based upon the above judgement of the Hon'ble High Court of Assam if the appellant has been clearing their goods on payment of duty on the assessable value under section 4(1)(a) of the Act, it cannot be said that there was any mala-fide intention on the part of the appellants to evade payment of duty. I also find that though this point of limitation was argued by the appellants before the Collector, the same has not been dealt with by the adjudicating authority. However, taking note of the fact that the similar show cause notices making similar allegations having been earlier issued to the appellants and having been quashed by the Guwahati High Court, it cannot be said that the department was <sup>not</sup> ~~had~~ not <sup>any</sup> knowledge of the practice of sale adopted by the appellants. Accordingly I hold

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that the extended period of limitation was not available to the department in respect of the first two allegations of advertisements expenses and entries on deposits.

21. However, I observe that the benefit of limitation would not be available to the appellants in respect of the allegations made with reference to substitution <sup>of</sup> Kitply (X) in place of defective marine grade. I find that allegations as regards substitution and clearances of prime quality goods with the defective goods were there in the earlier show cause notices, the said allegations cannot be made the basis debarring the department from similar allegations made in future, if the appellants continue with their clandestine practices. Such an allegation is based upon the factual positions and it could not be argued by the appellants that the fact of substitution was known to the department.

22. Accordingly I hold that the plea of limitation <sup>of appellants</sup> would not be available to the department in respect of the demand of Rs.58,96,580/- confirmed on the ground of mis-declaration quality of the goods cleared from their factory.

23. As regards the penalty I find that penalty of Rs.1 crore has been imposed on M/s. Kitply and Rs.1 lakh has been imposed on Shri P.K.Goanka, Managing Director of M/s. Kitply under rule 209 A of the said rules. As the demand of duty of Rs.7,05,95,368/- and of Rs.48,48,500/- has been set aside by me on merits as well as of limitation, I do not find any justification for imposing a heavy penalty of Rs.1 crore upon M/s. Kitply. However, same penalty is warranted in view of confirmation of demand of Rs.58,96,580/-. Accordingly I reduce the penalty amount on M/s. Kitply from Rs.1 crore to Rs.10 lakhs. In view of my foregoing <sup>submissions</sup> I also set aside the penalty on the Managing Director imposed under rule 209-A as no evidence of his active involvement has been brought on record by

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*(Signature)*

the department. The appeal is disposed of in above terms.

  
(ARCHANA WADHWA)

MEMBER(JUDICIAL)

DATED:

S.M./

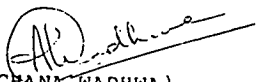
POINTS OF DIFFERENCE


In view of the separate orders recorded by Member(Technical) and Member(Judicial) the following points of difference emerge for reference to the Third Member.

(1) Whether the demand of Rs.7,05,95,368/- confirmed by including in assessable value the advertisement expenses incurred by M/s. Landle and Company is required to be sustained or not.

(2) Whether the demand of duty of Rs.48,48,500/- confirmed by including the interest on deposits made by M/s. Landle and Company in the assessable value of the goods is to be set aside in toto, as held by Member(Judicial) or the same is required to be lowered to Rs.43,43,500/- as held by Member(Technical).

(3) Whether the penalty of Rs.1 crore imposed on M/s. Kitply and penalty of Rs.1 lakhs imposed on Shri P.K.Goanka is liable to be confirmed as held by Member(Technical), or the same is required to be reduced to Rs.10 lakhs and set aside respectively as held by Member(Judicial).

  
(ARCHANA WADHWA)  
MEMBER(JUDICIAL)

  
(P.C.JAIN)  
MEMBER(TECHNICAL)

dated: 8th June 1993  
S.M./

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Appeal No.E/V-137/97

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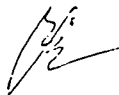
Appeal No.E/V-138/97

DIFFERENCE OF OPINION

PER LAJJA RAM:

24. The Difference of Opinion referred to me in these two appeals filed by (1) M/s. Kitply Industries Ltd. (hereinafter referred to as the 'assessee', the 'appellants' or 'M/s. Kitply'), and (2) Shri P.K. Goenka, is as under:-

- (1) Whether the demand of Rs.7,05,95,368.00 confirmed by including in the assessable value, the advertisement expenses incurred by M/S. Landle & Company is required to be sustained or not.
- (2) Whether the demand of duty of Rs.48,48,500.00 confirmed by including the interest on deposits made by M/S. Landle & Company in the assessable value of the goods is to be set aside in toto as held by Member (J) or the same is required to be lowered to Rs.43,43,500.00 as held by Member (T).
- (3) Whether the penalty of Rs.One Crore imposed on M/s. Kitply, and penalty of Rs.One lakh imposed on Shri P.K. Goenka is liable to be confirmed as held by Member (T), or the same is required to be



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reduced to Rs.10 lakhs and set aside respectively, as held by Member (J).

25. The assessee having three manufacturing units in the jurisdiction of Commissioner of Central Excise, Shillong was engaged in the manufacture of different varieties of Plywood. As a result of various searches and seizures and consequent investigations, it was revealed that a duty evasion of Rs.35,79,07,804.00 had been effected by the assessee during the period from Feb., 1990 to June, 1994 by (1) under valuation (2) substitution of grades (3) non-inclusion of advertisement expenses in the assessable value -- central excise duty calculated at Rs.7,05,95,368.00, and (4) non-inclusion of interest from deposits, in the assessable value -- central excise duty calculated at Rs.43,43,500.00. About 90% of the sales were effected by the assessee through their depots/branches at comparatively much higher prices and about 10% of the sales were effected at the factory gate at comparatively lower prices. The sales at the factory gate were found to be arranged ones and not in the ordinary course of wholesale trade. It was found that



expenses towards advertisements of the products of the assessee were incurred by M/s. Landle Agency (India) Ltd. (hereinafter referred to as 'M/s. Landle') under an agreement. The planning and monitoring of such advertisements was however, done by the assessee. Advertisements were made as per instructions of the assessee, but as directed by them the bills were raised on M/s. Landle. Except making payments, M/s. Landle had no role in advertising the products of the assessee. A relatively higher discount was given to M/s. Landle. M/s. Landle had also made an interest free deposit of Rs.2 crores to the assessee. The depressed sale value was fixed for sale to M/s. Landle as compared to the sale price to others from the assessee's depots/branches.

It was alleged in the show cause notice dated 28.02.95 that notional interest on such interest free deposits of Rs.2 crores was liable to form part of the assessable value of the plywood manufactured and sold by the assessee. Extended period of limitation was invoked. The role of Shri P.K. Goenka, Managing Director in the evasion of central excise duty was discussed in para-10.2 of the show cause notice. Penal provisions were invoked with regard to both the assessee and Shri P.K. Goenka.



There were a number of other allegations also in the show cause notice.

26. The matter was adjudicated by the Commissioner of Central Excise, Shillong, who under Order-in-Original dated 5.12.96 observed with regard to the charge of under-valuation that the stand of the Department for raising a differential amount of Rs.18,47,91,347.00 was un-sustainable. The ld. Commissioner of Central Excise noted that since the Department had not been able to prove with documentary evidence that the ex-factory price declared was artificially low, the claim of the assessee for applying the ratio of the decision in the case of Indian Oxygen Vs. CCE - 1988 (36) ELT 723 (SC) was acceptable. With regard to advertisement expenses, it was held that they were to form part of the assessable value and that un-due benefits had been shown to M/s. Landle to enable them to bear advertisement expenses. The demand of Rs.7,05,95,303 on account of non-inclusion of advertisement costs incurred by M/s. Landle in the assessable value was confirmed.

The argument that the deposit of Rs.2 crores had been taken for credit facilities was also not found acceptable and the demand of Rs.48,48,500.00 on this account was confirmed.

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Further, a demand of Rs.58,96,580 was confirmed on account of substitution of grade in different depots.

A penalty of Rs.1 crores was imposed on M/s. Kitply and Rs.10 lakhs on Shri P.K. Goenka, Managing Director of the assessee's company.


27. On appeal filed by M/s. Kitply and Shri P.K. Goenka, the Member (T) now Vice President observed that the price of the goods for supply to M/s. Landle was vitiated ab initio at factory gate by virtue of the terms of the subsisting agreement between the appellant and M/s. Landle. The said agreement provided for supply of a given minimum quantity of the goods per month at a fixed discount which was admittedly higher than the discount given to other dealers in consideration of the advertisements and interest free deposit of Rs.2 crores. The sale price at the factory gate had not been taken into account, the additional consideration flowing back to the appellants/manufacturer. After referring to the Supreme Court's decision in the case of M/s. Metal Box India Ltd. Vs. Collector of Central Excise - 1995 (75) ELT 449 (SC), the Member (T) as he then was, held that the additional consideration in respect of the sales to M/s. Landle was established and consequently the



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real price for sale of goods to M/s. Landle was to be the price at which duty was originally paid plus the additional consideration flowing to the appellants from M/s. Landle. It was observed that although M/s. Landle formed a separate class of buyer but the price was not a genuine price and had been depressed due to other conditions. The demand of duty confirmed on account of notional interest was however, reduced from Rs.48,48,500 to Rs.43,43,500 the amount shown in the show cause notice. The demand of Rs.58,96,580 on account of selling 'x'-grade plywood on the price of the prime normal quality was also confirmed. The plea of time bar was rejected. The order with regard to the penalties was also confirmed.

In a separate order recorded, the Member (J) observed that having accepted the genuineness of the ex-factory price declared and approved by the appellants, the adjudicating authority was not justified in going one step further and increase the assessable value in respect of the sales made to M/s. Landle by including therein the advertisement expenses incurred by M/s. Landle. The genuineness of the factory gate sales had not been doubted. These factory gate sales amounting to about 10% of the total

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sales had been made the basis for the assessable value in respect of about 40% sales made to other dealers (other than M/s. Landle) from the depots/branches, which were in addition to the 50% sales made to M/s. Landle which were the subject matter of the present appeals. Relying upon the Supreme Court's decision in the case of Indian Oxygen Ltd. - 1988 (36) ELT 723 (SC), the Member (J) observed that if the assessable value in respect of the sales to the extent of 50% (10% factory gate sales and 40% sales made to other dealers (other than M/S Landle) from the depots/branches) was available at the factory gate then there was no reason why the same value should not be made the basis for charging duty in respect of the other sales to the extent of 50% made from the depots/branches to M/s. Landle. She also agreed with the argument of the appellants that interest free deposit of Rs.2 crores was a method of pre-payment of part of the value of goods lifted by M/s. Landle. With regard to the advertisement cost, she observed that it, apart from promoting the product of the manufacturers, also enhanced the dealers' goodwill and in turn the bussiness of the dealer also went-up. Reference among other decisions had been made to Supreme Court's decision in the case of Philips India




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Ltd. Vs. CCE, Pune - 1997 (19) RLT 471 (SC). It was concluded that the advertisement by M/s. Landle was for the benefit of both M/s. Kitply and M/s. Landle and could not be taxed by adding the same to the assessable value especially when the factory gate sale price was available and had been applied in respect of other dealers. It was held that the advertisement expenses incurred by M/s. Landle could not be subjected to central excise duty by adding the same in the assessable value of the plywood. The demand of Rs.7,05,95,368.00 on this account was set aside.

As regards the interest free deposits of Rs.2 crores by M/s. Landle, it was held that it did not influence the sale price to M/s. Landle and that the Supreme Court decision in the case of Metal Box India Ltd Vs. CCE - 1995 (75) ELT 449 (SC) did not apply to the facts of the case under consideration. The demand of Rs.48,48,500 on account of interest free deposit was found to be un-sustainable.

With regard to the demand of duty of Rs.58,96,580 confirmed on the ground of mis-declaration with regard to the quality of plywood cleared as 'X'-grade from the factory and sold as good quality grade from some of the sales depots of the



assessee's company, she agreed with the views expressed by the ld. Member (T) as he then was.

With regard to limitation, the ld. Member (J) had held that the extended period of limitation was not available to the Deptt. in respect of the allegations of advertisement expenses and interest on deposits. It was however held that the benefit of limitation would not be available to the appellants in respect of the allegations made with reference to substitution of kitply 'X' in place of defective marine grade. The plea of limitation was held to be not available to the appellants in respect of the demand of Rs.58,96,580 confirmed on the ground of mis-declaration of the quality of the plywood cleared from the factory of the appellants.

The amount of penalty imposed on M/s. Kitply was reduced from Rs.One crore to Rs.10 lakhs. The penalty of Rs.One lakh imposed on Shri P.K. Goenka, Managing Director was set aside.

28. The matter was heard on 12.05.99 when Shri V. Lakshmikumaran, Advocate submitted that about 10% of the sales of the appellants were at the factory gate and the rest of their 90% sales were through their depots, out of which about 50% of the sales were to M/s. Landle and the rest were to other independent



dealers. M/s. Landle was their bulk buyer and under an agreement was entitled to a higher discount. They were also under obligation to incur expenditure on advertisement and also to make a deposit of Rs.2 crore with the appellants. There was no allegation that the factory gate price was not genuine. He submitted that the factory gate price was required to be adopted for all their sales. He relied-upon the Tribunal's decision in the case of Collector of Central Excise Vs. Indian Oxygen Ltd. - 1989 (41) ELT 610 (Tribunal), wherein the Tribunal had held that when the price ex-factory was ascertainable, the assessments should be in terms of that price. He argued that if the cost of advertisement and notional interest was to be taken into account then the price will go beyond the price charged from the dealers. He referred to the Tribunal's decision in the case of Racold Appliances Vs. CCE, Pune - 1994 (69) ELT 312 (Tribunal) wherein the Tribunal had held that the advertisement charges were not includible in the assessable value and that when the goods were sold both at the factory gate and also through depots, the ex-factory wholesale price was to be the assessable value, and that the depot price was not relevant when depot sales were not being treatable as a separate class of buyers. There was no

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nexus between the interest free deposit and the price charged from M/s. Landle. On limitation, he argued that certain investigations had been undertaken earlier and the assessee could not be charged with suppression. He referred to the amendments made in Section 4 by Section 74 of the Finance (No.2) Act 1996 (33 of 1996) and submitted that the proceedings in the present case related to the period prior to these amendments. He pleaded that the order proposed by Member (J) be up-held.

29. In reply, Shri N.C. Roychowdhary, Sr. Advocate submitted that the advertisements enhanced the value of the goods and the advertisement incurred by M/s. Landle enhanced the value of the goods supplied by M/s. Kitply. The cost of such advertisement incurred on account of the assessee was includible in the assessable value of the plywood. He referred to the following decisions:-

- (1) Union of India Vs. Bombay Tyre International Ltd. - 1983 (14) ELT 1896 (SC).
- (2) Metal Box India Ltd. Vs. Collector of Central Excise, Madras - 1995 (75) ELT 449 (SC).
- (3) Govt. of India Vs. Madras Rubber Factory Ltd. - 1995 (77) ELT 433 (SC).

He mentioned that against the impugned order-in-original, the Department had also filed an



appeal which had been listed as appeal No.165-166/98. The appeal was filed in Feb., 1998 after the referring Bench had heard the matter. The appellants had not disclosed the facts to the Department as referred to in para 51 of the show cause notice. The copy of the agreement was recovered as a result of search and had not been known to the Department earlier. He submitted that the decisions relied upon by the Member (J) did not take into account the Supreme Court's decision in the case of Union of India Vs. Bombay Tyre International Ltd. - 1983 (14) ELT 1896 (SC). He submitted that the issue in the case of Philips India Ltd. Vs. CCE, Pune - 1997 (19) RLT 471 (SC) was different. He pleaded for the acceptance of the order proposed by the Member (T) as he then was.

30. I have carefully considered the matter. In this difference of opinion matter, I am mainly concerned with the allegations relating to the additions in the assessable value of the plywood manufactured by M/s. Kitply, on account of the advertisement expenses incurred by M/s. Landle for advertising the plywood manufactured by M/s. Kitply, and the interest free deposits given by M/s. Landle to M/s. Kitply. The Commissioner of Central Excise, who had adjudicated the matter had held that the ex-factory price for factory gate sales as declared by



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the assessee was the genuine price and was acceptable in view of the Supreme Court's decision in the case of Indian Oxygen Ltd. Vs. CCE - 1988 (36) ELT 723 (SC). The declared assessable value under Section 4 (1) (a) of the Central Excises Act, 1944 (hereinafter referred to as the 'Act') was found to be correct and acceptable. The demand for differential duty of Rs.18,47,91,347 was found to be un-sustainable.

The ld. Sr. Advocate had mentioned that against this finding of the adjudicating authority the Revenue had come in appeal before the Tribunal. This appeal by the Revenue was not heard by the Tribunal alongwith the appeal by the assessee. The appeal was said to have been filed by the Revenue in February, 1998 while the matter was heard by the referring Bench on 24.09.1997. I, therefore, cannot deal with this aspect of the matter.


I consider that when the adjudicating authority had accepted that the declared ex-factory price was genuine, then there had to be strong reasons to reject the same ex-factory price for sales from the depot. There is no allegation that M/s. Landle were related person of M/s. Kitply for the purposes of Section 4 of the Act. I also find that the higher discount given to M/s. Landle had not been

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disturbed.

31. From the depots about 40% sales were effected to independent dealers, dealers other than M/s. Landle. The central excise duty had been determined in respect of such sales to the dealers (other than M/s. Landle) at the ex-factory sale price and no demand had been made with regard to such sales. For sales to M/s. Landle while the central excise duty was determined on the basis of the normal ex-factory price, no claim was made by the assessee of the differential higher discount given to M/s. Landle. The normal lower discount was already built in the normal ex-factory price at which central excise duty was calculated with regard to the sales to M/s. Landle. No case has been made out of any additional consideration to be loaded on the ex-factory price and that the provisions of the central excise (valuation) Rules 1975 had not been invoked with regard to about 50% of the sales (10% from ex-factory + 40% from depot to buyers other than M/s. Landle).

32. On the question of advertisement, it had been noted that the appellants were also incurring expenditure on their own account. M/s. Landle were lifting about 50% of the total production of the assessee and thus M/s. Landle were concerned with the



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sale of the plywood manufactured by M/s. Kitply. The ld. Member (J) had referred to the Supreme Court's decision in the case of Philips India Ltd. Vs. Collector of Central Excise, Pune - 1997 (19) RLT 471 (SC), wherein the Hon'ble Supreme Court had held that the advertisement cost incurred by the dealers was not to be added, in the assessable value as such advertisement benefits equally the manufacturer and the dealer (Head Note).

The ld. Member (T), as he then was, had mentioned that the advertisement by the buyer was an additional consideration which was going to influence the price at which the goods were sold from the assessee's depots to M/s. Landle. As a higher discount had been given, as a consideration of the advertisements and interest free deposit, he held that the price of the plywood for supply to M/s. Landle was vitiated ab initio at factory gate by virtue of the terms of the agreement, on the ground that the sale price at the factory gate had not taken into account the additional consideration flowing back to the appellants/manufacturer. I however, find that the higher discount had not been considered inadmissible. For advertisement, it has not been established that it was not for the benefit of the



customer, M/s. Landle who were lifting about 50% of the production of M/s. Kitply.


Supply of about 50% of the production to M/s. Landle could not be considered as an additional consideration for M/s. Kitply. A higher discount to the customer could also not be considered as an additional consideration to the manufacturer. Additional discount is at the cost of the manufacturer. The ld. Member (T) now Vice President had referred to para C 7 of the appeal wherein it had been mentioned that the appellants had given extra benefit of about Rs.28 crores to M/s. Landle as compared to other dealers and in lieu thereof had got a benefit of about 25 crore. This benefit is with regard to the advertisement cost and interest free deposits. For advertisements, it had not been made out that it was exclusively for the benefit of the appellants. This is also on record that the appellants were also incurring expenditure on their advertisements.

33. As regards the inclusion of the cost towards interest free deposits, the ld. Member (T) as he then was had taken it as an additional consideration flowing to the assessee. On the other hand, the ld. Member (J) had observed that there was no nexus


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between the interest free deposits and the prices charged from M/s. Landle. The Department has not disallowed the higher discount given to M/s. Landle. Learned Member (J) had rightly distinguished the case of M/s. Metal Box India Ltd. Vs. CCE - 1995 (75) ELT 449 (SC) stating that whereas different prices charged from different buyers were the basis for arriving at the factory gate price in Metal Box case (as the price lists were filed in part-II of the price lists proforma) the same is not the case here.

34. After taking into account all the relevant facts and considerations, I agree with the Order proposed by the ld. Member (J).

  
( LAJJA RAM )  
MEMBER (T)

Dated:  
Ckp.

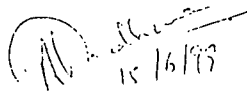
  
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FINAL ORDER

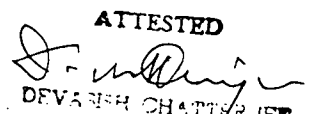
- (i) Demand of duty of Rs.7,05,95,368.00(Rupees seven crore five lakh ninety-five thousand three hundred sixty-eight) only is set aside;
- (ii) Demand of duty of Rs.48,48,500.00(Rupees forty-eight lakh forty-eight thousand five hundred) only is set aside;
- (iii) Demand of duty of Rs.58,96,580.00(Rupees fifty-eight lakh ninety-six thousand five hundred eighty) only is confirmed;
- (iv) Penalty on M/s. Kitply Industries Ltd. is reduced to Rs.10,00,000.00(Rupees ten lakh) only;
- (v) Penalty of Rs.1,00,000.00(Rupees one lakh) only imposed on Shri P.K.Goenka is set aside.

  
(ARCHANA WADHWA)  
MEMBER(JUDICIAL)

  
(P. C. JAIN)  
VICE-PRESIDENT

DATE:  
DUTTA/

ATTESTED

  
DEVANISH CHATTERJEE  
T. OFFICIAL OFFICER  
Customs & Excise Control  
Appellate Tribunal (T. & A.)  
CALCUTTA-700 014

9/7/99

398339

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Civil Appeal No. D17640/1999 (For Preliminary Hearing)

COMMR. OF CENTRAL EXCISE, SHILLONG

VERSUS

KITPLY INDUSTRIES LTD. & ANR.

Certified to be true copy

Assistant Registrar (Judl.)

Supreme Court of India

Appellant

Respondent

(With Appln(s), for condonation of delay in filing appeal.)

Date : 13/01/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.P. BHARUCHA  
HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI

For Appellant (s)

Mr. N.K. Bajpai, Adv.  
Mr. P. Parmeswaran, Adv.

For Respondent (s)

UPON hearing counsel the Court made the following  
O R D E R

Delay condoned.

The civil appeal is dismissed.

(T.I. Rajput)  
Court Master

(S. Sen Gupta)  
Court Master

(Signed order is placed on the file)

15/1/2000

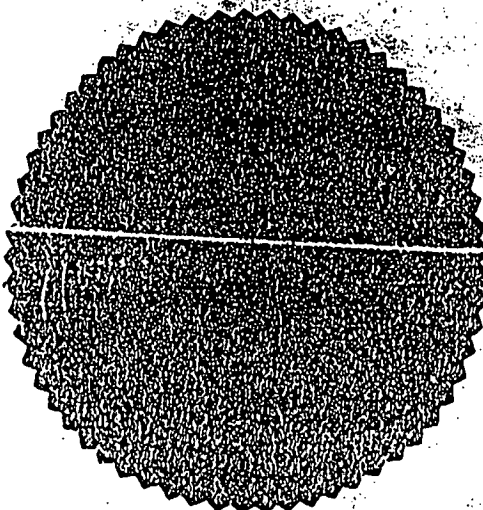
3/15/2000

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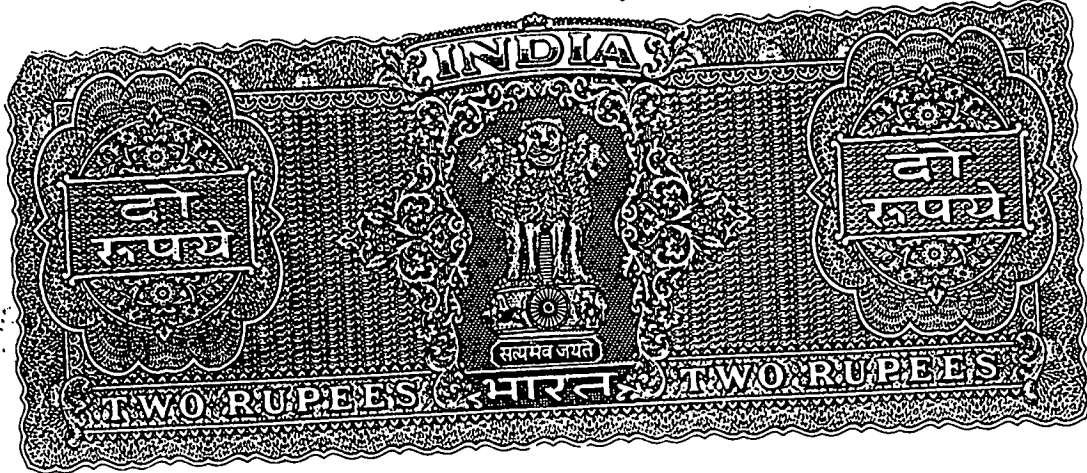


#### AFFIDAVIT

I, Alan Rokhum Mithran, son of Shri P.V. MITHRAN, aged 30 years, resident of Aizawl, Mizoram, do hereby solemnly affirm and state on oath as under:-

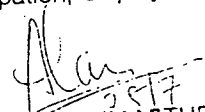
- (i) That I completed B.Com from Saint Anthony's College, Shillong in 1993.
- (ii) That I took a diploma in ALT, Bangalore, in 1995-96 and after taking up the diploma, I was working with M/s. Gokuldas Hinduja, Bangalore who are manufacturers and exporters of garments in Bangalore.
- (iii) That I came to Shillong in May, 1997 to prepare for the competitive examinations but got interested in coal business as some of my friends were engaged in this business.
- (iv) That in order to further explore the potential of the coal business and export, I met a number of persons engaged or planning to get engaged in this business. This brought me in contact with Mr. S.N. Jagodia of M/s. Kitply Industries Limited whose Company was interested in export of coal from Ghasuapara and Tura. Being convinced that I could promote their business at Tura or Ghasuapara in the field of coal export, they engaged me temporarily for three months on trial basis vide their letter dated 25.07.1997 and also provided me facilities like accommodation, transport, electricity and phone, etc. In order to promote their business.
- (v) That I was living independently throughout and did not consider it necessary to inform my mother Mrs. L.R. Mithran about my work with M/s. Kitply Industries Limited nor she helped me in any manner whatsoever in getting me this work or engagement.

Contd... 2/-



- 2 -

- (vi) That I left Tura in December 1997 as the coal business could not take off profitably and it also ended my association with M/s. Kitply Industries Limited.
- (vii) That I am presently having my own business at Aizawl since 1998.
- (viii) That I have been living independently on my own since attaining the age of majority, and have neither asked for any help from my parents in the matter of my employment or business, nor have I considered it necessary to keep them informed about my profession, occupation, employment or business..

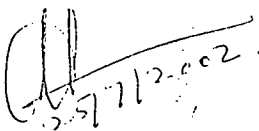
  
(ALAN ROKHUM MITHRAN)  
DEPONENT

VERIFICATION

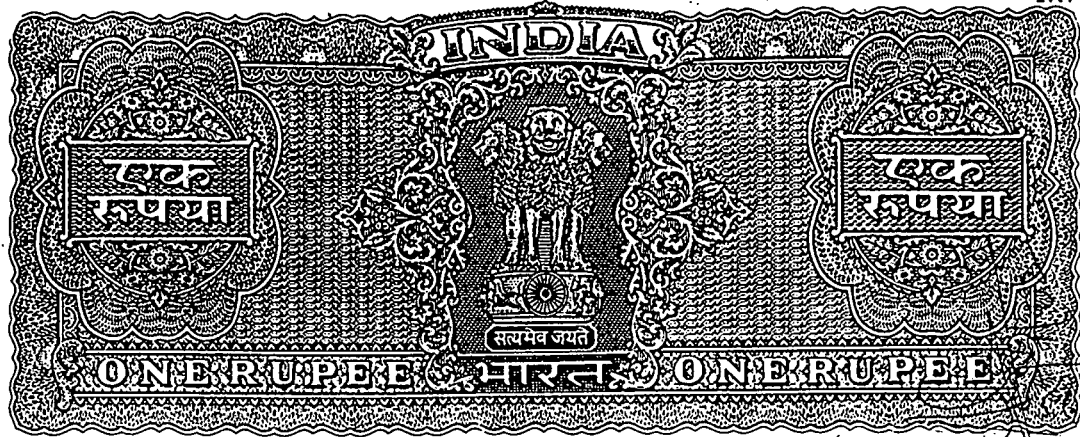
I, ALAN ROKHUM MITHRAN, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of JULY, 2002 at  
SHILLONG.

  
(ALAN ROKHUM MITHRAN)

  
25/7/2002

Contd...3/-



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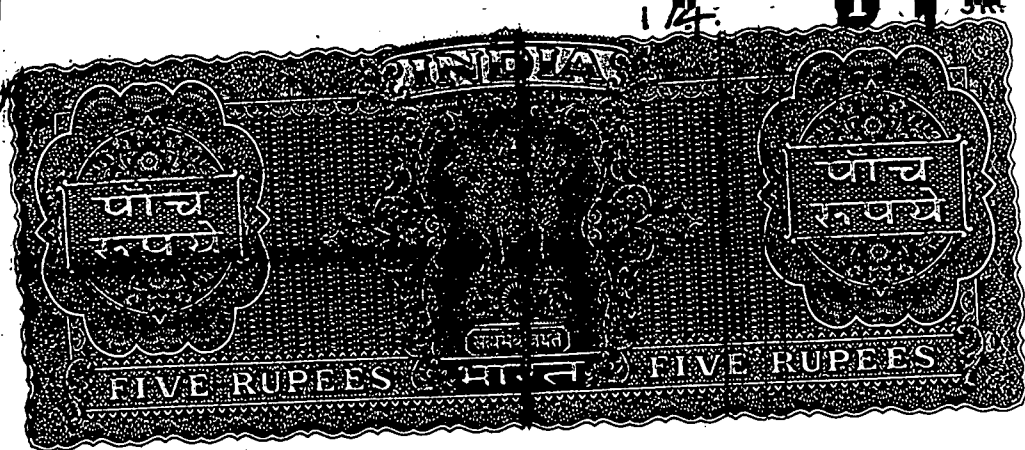
-3-

Identified by  
H. Ahmed 25/7/02.  
Shri H. Ahmed  
Advocate.

Specimen appeared before me  
by the deponent who is  
identified by Shri H. Ahmed  
Advocate, this day the 25<sup>th</sup> July 1902

(H. Ahmed)  
Magistrate 1<sup>st</sup> Class  
Calcutta.



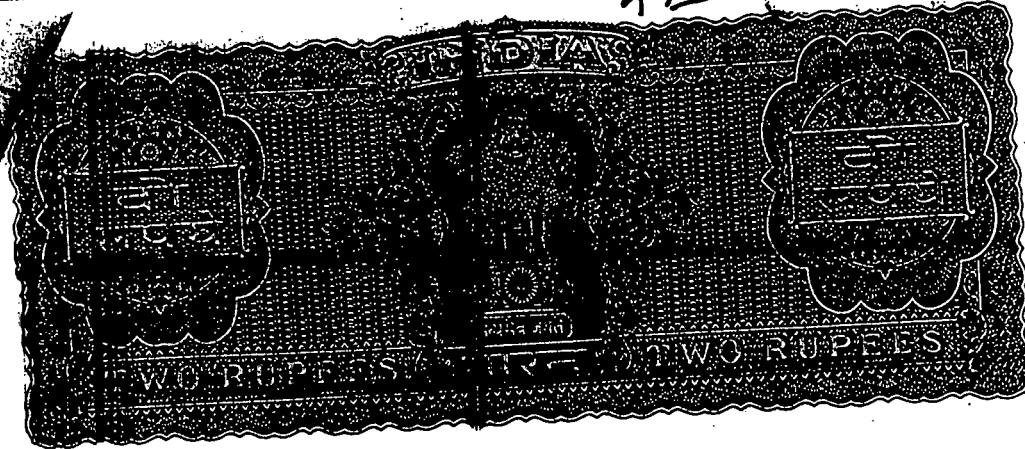


### AFFIDAVIT

I, Lalthan Zauvi  
Sungte, aged about 58 years, resident of Shillong, Meghalaya do hereby solemnly  
affirm and state on oath as under:-

- wife of Late Mr. S.T.
- (i) That I was a member of the group that decided to form a charitable society in the name and style of Zami Memorial Charitable Trust (for short 'the Trust') in 1996 to render help to women, orphans and others.
  - (ii) That I was the first President of the Trust from October, 1996 to December, 1998 and am aware of the activities of the Trust during the said period.
  - (iii) That the Trust received a sum of Rs.10,000 in cash as donation from our Patron (late) Mr. K.T. Khuma and a sum of Rs.10,000 in cash from one Shri R.C. Agarwal. These amounts were handed over by the donors to me and the said amounts were deposited in the account of the Trust.
  - (iv) That the Trust received a demand draft of Rs.5,00,000 from M/s. Warren Tea Limited by post at our office - Law-u-sib, Madanriting.
  - (v) That similarly in 1997, the Trust also received a donation of Rs.1,00,000 from an unknown source by a demand draft which was also received by post at our office.

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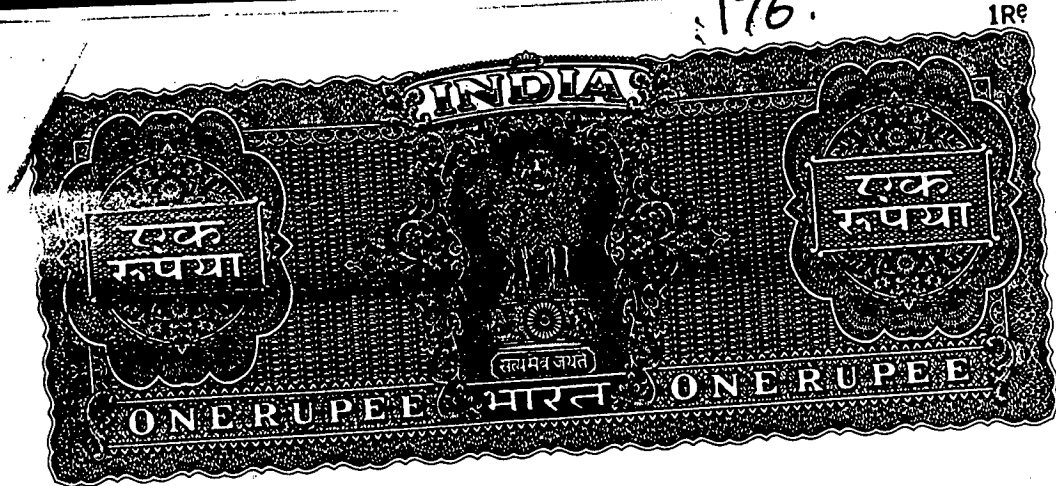
- 2 -

(vi) That Mrs. L.R. Mithran did not help the Trust in any manner whatsoever in getting the donations mentioned above, nor was she informed at any stage about receipt of these donations as she had no authority to handle such matters or have information about the same.

(vii) That with these amounts, our Trust adopted 15 children from poor families for the purpose of educating them from the academic year starting from February, 1997, particulars of which are as under:-

S.No.	Name of the Person	Parent's Name	Date of birth	Class	Roll No.	Name of the School
1.	Master Lalldamung,	L. Rastien,	28/07/85,	IV,	44,	HL Mizo High School.
2.	Master David Pao,	Goucher (L),	28/04/86,	I,	35 HL,	Mizo High School.
3.	Master Labrennawia,	Lalainipuli,	28/10/88,	I,	36,	HL Mizo High School.
4.	Master Chungkhahol,	Naguldhopao,	12/06/86,	K6-II,	49,	HL Mizo High School.
5.	Master Labrenruata,	Parthningthang,	08/11/86,	K6-I,	48,	HL Mizo High School.
6.	Master Labruatsanga,	Saldangvela,	18/10/87,	K6-I,	30,	HL Mizo High School.
7.	Miss Lalhanpuli,	R. Thantlira,	10/10/88,	K6-I,	47,	HL Mizo High School.
8.	Miss Lalhanpuli,	Blackland,	19/07/89,	K6-I,	28,	HL Mizo High School.
9.	Miss Renruati,	Samuela,	06/10/89,	Nursery,	27,	HL Mizo High School.
10.	Master Ngulrothum,	Labnunsang,	19/10/90,	Nursery,	46,	HL Mizo High School.
11.	Miss Nanzangal,	Zamanga,	07/03/91,	Nursery,	45,	HL Mizo High School.
12.	Miss Chinkhauk,	Laldhama (L),	08/07/91,	Nursery,	30,	HL Mizo High School.
13.	Miss Lalhinpuli,	Labrenruata,	14/11/92,	Nursery,	27,	HL Mizo High School.
14.	Miss Labunhlan,	Thanga Hwar,	17/07/91,	Nursery,	Douglas School.	
15.	Miss Pretico,	Lalthaldin Labnunsang,	15/04/92,	Nursery,	Providence School.	

Contd\_3



- 3 -

- (vii) That selection and approval of the names of these children was made by the Committee for all the expenditure involved regarding their uniforms, books, admission, etc.
- (ix) That no amount was drawn or handled by Mrs. L.R. Mithran or any member of her family as such functions are discharged by the Office bearers like Secretary (Finance), Treasurer, President, etc.
- (x) That the Trust received as donation a Tata Mobile vehicle from M/s. Warren Tea Limited and the said vehicle was registered in the name of the Trust and parked in our office in Law-u-sib, Madanriting and used for charity work. Neither Mrs. L.R. Mithran nor any member of her family used it for their personal work.
- (xi) That during my tenure as President, the trustee, Mrs. L.R. Mithran donated her land at Umbir village (near Barapani) which is 8-9 acres for the purpose of setting up a free de-addiction center. The cost of the land as on today will fetch a sum of Rs.25,00,000 approximately.
- (xii) That in accordance with the rules framed and approved by the Committee, neither Mrs. L.R. Mithran nor any member of her family have the right or the power to draw, utilize or in any manner deal with the funds of the Trust as none of them are authorized to do so.

Contd\_4

- (xiii) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust (for short 'the Trust') for the use of herself or any member of her family, nor has she ever used any of such property for herself or any member of her family.
- (xiv) That no donation in cash or kind from any company, firm or business organization was received through her or due to her influence.
- (xv) That neither Mrs. L.R. Mithran solicited any donations on behalf of the Trust nor she received any such donation. Neither she was ever informed nor was the Trust required to inform her about various donations received by the Trust from time to time.

*L. Zauvi 7/8*  
LALTHAN ZAUVI  
DEPONENT

VERIFICATION

I, LALTHAN ZAUVI, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this \_\_\_\_\_ day of \_\_\_\_\_, 2002 at \_\_\_\_\_.

*Identified by*  
*unfair H/O*

*L. Zauvi 7/8*  
LALTHAN ZAUVI

*Mr. Lalthantiinga Ralte*  
*Advocate Rignai.*  
(LALTHANTIINGA RALTE)  
Advocate  
Law Chamber D.C. Complex  
Aizawl.

*Solely affirmed before*  
*me by the deponent who*  
*is identified by Mr.*  
*advocate, this day*

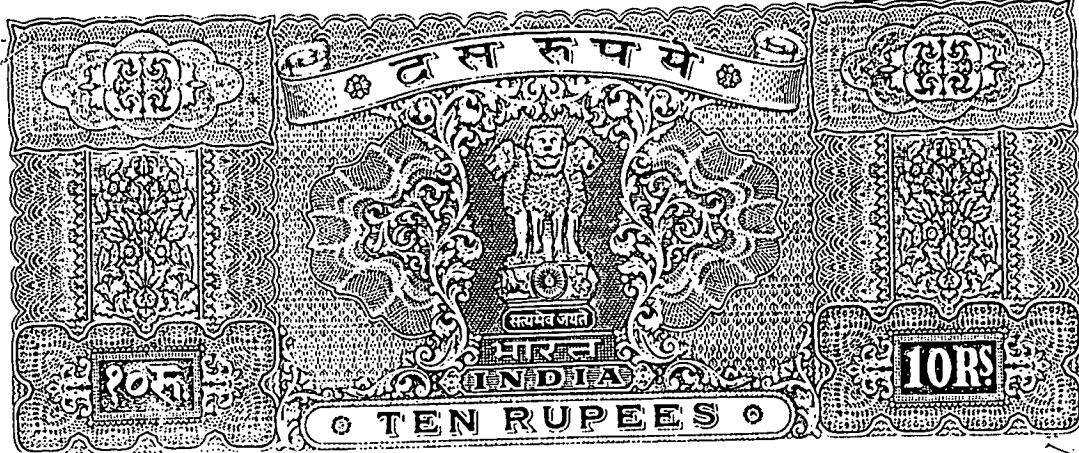
*7/8*  
*Magistrate*  
"Magistrate 1st Class"  
Aizawl District Court

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### AFFIDVAIT

I, L.Chungnungi, daughter of *CHALTAWIA*,  
 aged about      years, resident of Madanriting, Shillong, Meghalaya,  
 do hereby solemnly affirm and state on oath as under:-

*Subscribed by*  
*25/4/02*

- (i) That I joined Zami Memorial Charitable Trust (for short 'the Trust') from its inception in 1996. I was holding the post of Treasurer from 1996 till 1998. The bank account of the Trust had been opened by me, the Secretary (Finance) and the President. We jointly operated the said account during the period and tenure of my office as Treasurer. The Trustee, Mrs. L.R. Mithran never handled any cash or the bank account of the Trust as she was not authorized to do so. Further, Mrs. L.R. Mithran did not draw any money from the account of the Trust, nor she used any of the properties of the Trust in any manner whatsoever.

*CLL*  
*25/11/2002*

Contd....2

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- (ii) That all decisions relating to the Trust are taken by the Governing Body/Executive Committee, and Mrs. L.R. Mithran has no say in the matter.
- (iii) That all the properties of the ZMCT were used for charitable work and not for any other purpose.
- (iv) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust for the use of herself or any member of her family, nor has she ever used any of such property for herself or any member of her family. No donation in cash or kind from any company, business house or organization or firm was received through her. Mrs. L.R. Mithran neither solicited any donations on behalf of the Trust nor she received any such donation on behalf of the Trust during the period in which I was the Treasurer of the ZMCT. No information was given or required to be given to her about any donations received by the said Trust.

*L. Chungnungi* 25/7/02  
(L. Chungnungi)  
DEPONENT

VERIFICATION

I, L. Chungnungi, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of JULY, 2002 at

SHILLONG.

*I declare freely by*  
*Shree H. Ahmed*  
*Advocate.*  
25/7/02

*L. Chungnungi* 25/7/02.  
(L. Chungnungi)

Solemnly affirmed before me  
by the deponent who is identified  
by Shree H. Ahmed Advocate this  
day the 25<sup>th</sup> July 2002.

*25/7/2002*  
Magistrate 1<sup>st</sup> Class.  
Shillong.



25/7/02

**AFFIDAVIT**

I, Laldawni , daughter of LALVENGA (L), aged about 48 years, resident of Madanriting, Shillong - Meghalaya, do hereby solemnly affirm and state on oath as under:-

- (i) That I joined Zami Memorial Charitable Trust (or short the Trust) from its inception. I was the Vice President from 1996 - 1998 and then as the President of the Trust from 1998-2000.
- (ii) That as an Executive Member of the Trust, I am aware of the functioning of the Trust.
- (iii) That the trustee, Mrs. L.R. Mithran has never handled cash or accounts of the Trust.
- (iv) That all decisions are taken by the Governing Body/Executive Committee of the Trust.
- (v) That Mrs. L.R. Mithran has not operated the bank account of the Trust, as she is not authorized to draw money from the bank account of the Trust.
- (vi) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust for herself or any member of her family, nor has she ever used any of such property for herself or any member of her family.

Contd\_2

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-2-

(vii) That no donation in cash or kind from any business organization or firm were received through her or due to her. No intimation was given to her or was required to be given to her about receipt of any donations by the Trust.

(viii) That neither Mrs. L.R. Mithran solicited any donations on behalf of the Trust nor she received any such donation on its behalf.

*Rohini 25/7/02*  
LALDAWNI  
DEPONENT

VERIFICATION

I, LALDAWNI, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of JULY, 2002 at SHILLONG.

*Identified by  
Shree H. Ahmed  
Advocate.*

*Rohini 25/7/02*  
LALDAWNI

*Solemnly affirmed before me  
by the deponent who is  
identified by Shree H. Ahmed  
Advocate this day the 25<sup>th</sup> July 2002.*

*GN 25/7/2002  
Magistrate 1<sup>st</sup> Class  
Shillong.*





AFFIDAVIT

I, Lalneihchawngi , daughter of Shri Thianga, aged about 45 years, residing at Diphy, Karbianglong, Assam, do hereby solemnly affirm and state on oath as under:-

(i) That I joined Zami Memorial Charitable Trust (for short 'the ZMCT') from its inception in 1996 and I was holding the post of Treasurer from 1998 to 2000. During this period, the ZMCT's trustee, Mrs. L.R. Mithran had never handled cash or the bank account of the Trust as she was not authorized to do so.

(ii) That all decisions relating to the Trust are taken by the Governing Body/Executive Committee. Mrs. L.R. Mithran had no control over such decisions.

(iii) That the vehicle donated to the Trust was used for charitable work of the Trust.

Contd...2



- 2 -

- (iv) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the ZMCT for herself or any member of her family, nor has she ever used any of such property for herself or any member of her family.
- (v) That no donation by way of any Bank draft or cheque or in cash or kind from any business organization or firm was received through her or at her instance. No information in respect of any donation received by ZMCT is given or required to be given to Mrs.L.R. Mithran.
- (vi) That neither Mrs. L.R. Mithran solicited any donations on behalf of the Trust nor she received any such donation as she had no authority to do so on behalf of the Trust.

*Lalnei Chawngi* 25/7/02  
LALNEIHCHAWNGI

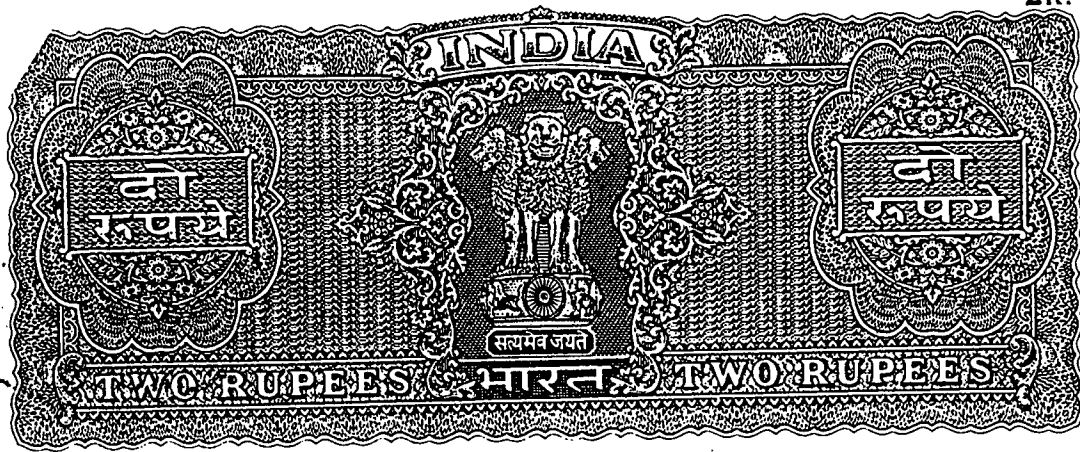
DEPONENT

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- 3 -

VERIFICATION

I, Lalneihchawngi, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

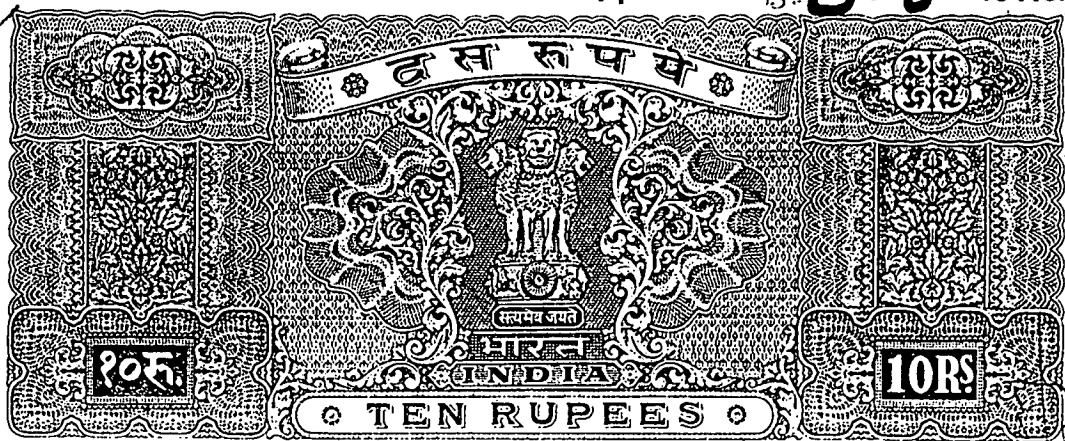
verified on this 25<sup>th</sup> day of JULY, 2002  
at SHILLONG.

*Identified by*  
*H. H. Khumad*  
*25/7/02*  
*Shree H. Khumad.*

*Shree H. Khumad*  
*25/7/02*  
LALNEIHCHAWNGI

*Solemnly affirmed before me*  
*by the deponent who is*  
*identified by Shree H. Khumad*  
*Advocate, this day, the 25<sup>th</sup> July 2002.*

*H. H. Khumad*  
*25/7/02*  
*Magistrate*  
*Shillong.*



AFFIDAVIT

I, Lalremawii , daughter of Shri HRANGVELA ,  
aged about 48 years, resident of Madanriting, Shillong do hereby solemnly  
affirm and state on oath as under:-

- (i) That I joined Zami Memorial Charitable Trust (for short 'the Trust')  
from its inception in 1996 and was holding post of the Secretary  
(Properties) from 1998-2000.
- (ii) That during the above period, the trustee, Mrs. L.R. Mithran has  
never handled cash or operated the bank account of the Trust as she  
is not authorized.
- (iii) That the vehicle donated to the Trust is used for charitable work and  
by the Trust for the work in our land at Umbir.
- (iv) That all decisions of the Trust are taken by the Governing  
Body/Executive Committee of the Trust.
- (v) That Mrs. L.R. Mithran is neither authorized to use any movable or  
immovable property of the Zami Memorial Charitable Trust (for short  
'the Trust') for herself or any member of her family, nor has she ever  
used any of such property for herself or any member of her family.
- (vi) That no donation in cash or kind from any business organization or  
firm were received through Mrs. L.R. Mithran or due to her. No  
intimation or information was given or required to be given to her  
about donations received by the Trust . . . 2

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(vii) That neither Mrs. L.R. Mithran solicited any donations on behalf of the Trust nor she received any such donation on behalf of the Trust.

*[Signature]*  
25/7/02  
LALREMAWII  
DEPONENT

VERIFICATION

I, Lalremawii, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of JULY, 2002 at  
SHILLONG

*[Signature]*  
25/7/02  
Lalremawii

Identified by  
*[Signature]* 25/7/02  
Shree H. Ahmed  
Advocate

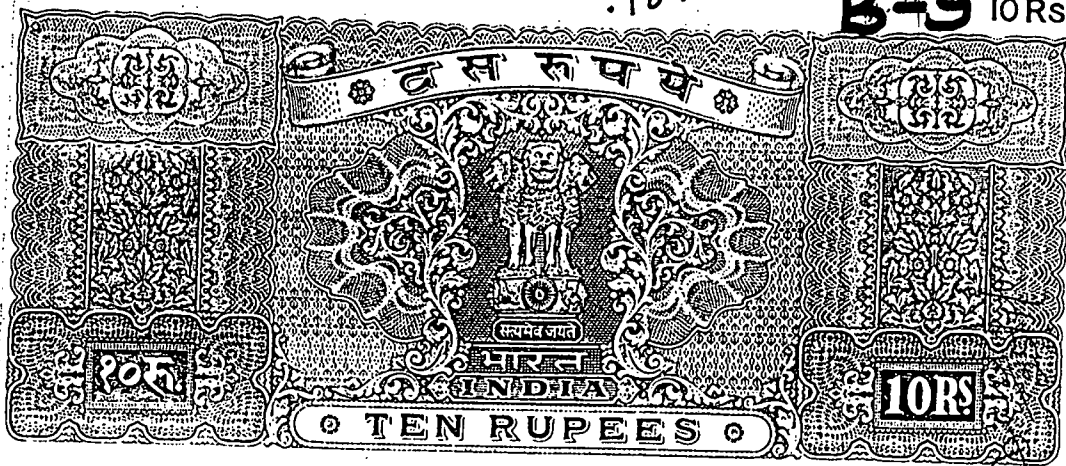
Solemnly affirmed before me  
by the deponent who is identified  
by Shree H. Ahmed Advocate the  
day the 25<sup>th</sup> July 2002.

*[Signature]* 25/7/2002  
Magistrate 1<sup>st</sup> Class  
Shillong



:187:

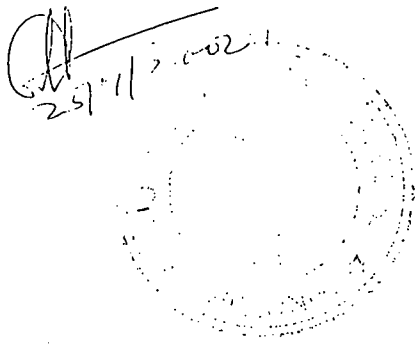
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AFFIDAVIT BEFORE MAGISTRATE  
1<sup>st</sup> Class, SHILLONG.

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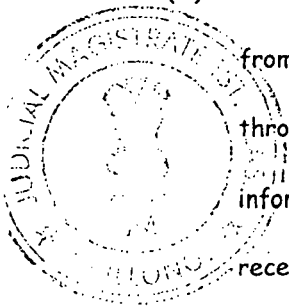
Jari 20/4/50  
292  
248

AFFIDAVIT

I, Darthahnieng, daughter of NEISELA HNAR, aged about 47 years, resident of Shillong, Meghalaya do hereby solemnly affirm and state on oath as under:-

- (i) That I am holding the post of Treasurer of the Zami Memorial Charitable Trust (ZMCT) from 2000 till date. During this period, the Trustee, Mrs. L.R. Mithran has never handled cash or drawn any money from the Trust's account, as she was not authorized to do so. The Tata Mobile vehicle donated to the Trust is used for charitable work and has not ever been put to personal use by Mrs. L.R. Mithran.
- (ii) That all decisions of the Trust are taken by the Executive Committee. Mrs. L.R. Mithran does not have any powers to override such decisions. She has no control over the affairs of the Trust.
- (iii) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the ZMCT for herself or any member of her family, nor has she ever used any of such property for herself or any member of her family.
- (iv) That no donation in cash or kind or by way of bank Draft or cheque from any business house, establishment, Company or firm was received through Mrs. L.R. Mithran or on account of their pursuits. No information is given or required to be given to her about any donations received by the Trust.

*[Signature]*  
25/7/2002.



CONTD. . . . 3

- (v) That neither Mrs. L.R. Mithran solicited any donations on behalf of the Trust nor she received any such donation nor she was authorized for any such purpose by the Trust.

*Dani*  
85/7/02  
DARTHAHNIENG  
DEPONENT

249

VERIFICATION

I, Darthahnieng, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

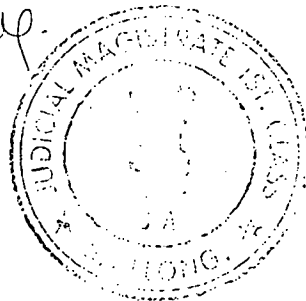
Verified on this 25<sup>th</sup> day of JULY, 2002 at  
SHILLONG.

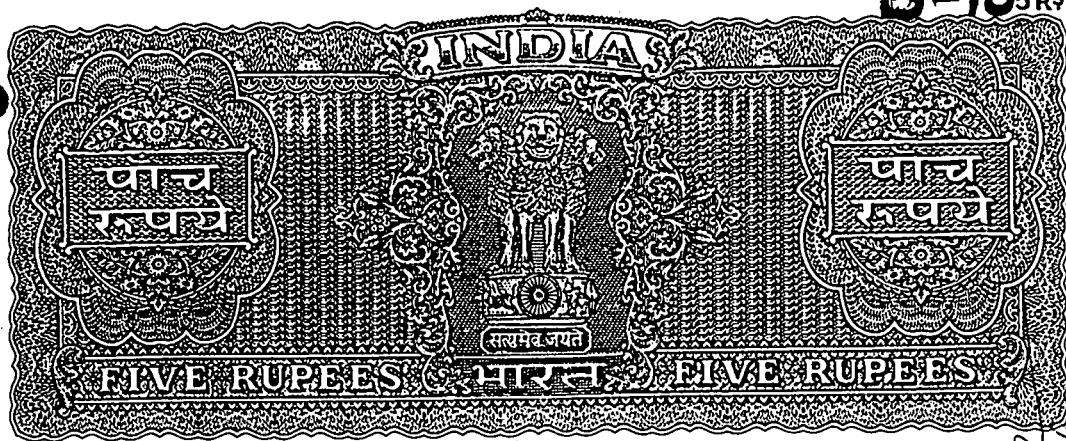
*Dani*  
25/7/02  
DARTHAHNIENG

Identified by  
*H. Ahmed*  
25/7/02  
Shree H. Ahmed  
Advocate

Solemnly affirmed before me  
by the deponent who is identified  
by Shree H. Ahmed Advocate, this  
day the 25<sup>th</sup> July 2002.

*G. H. 25/7/2002*  
Magistrate 1<sup>st</sup> Class  
Shillong.



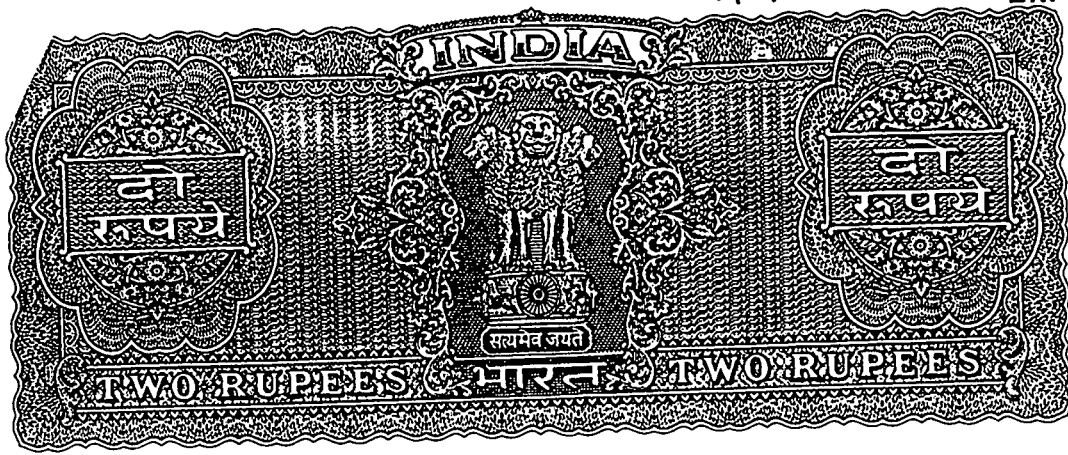


AFFIDAVIT

I, Hlimpulli daughter of Late Mr. Lalhmangaiha,  
aged about 44 years, resident of Bomfylde Road, Shillong,  
Meghalaya, do hereby solemnly affirm and state on oath as under:-

- (i) That I was holding the post of the Vice President in the Zami Memorial Charitable Trust (ZMCT) from 1998-2000 and also the post of the President from 2000 till date.
- (ii) That during the above period, ZMCT's trustee Mrs. L.R. Mithran never operated the bank account of the Trust, nor had she drawn any money from the Trust's account, as she was not authorized to do so.
- (iii) That all decisions relating to the Trust are taken by the Governing Body/Executive Committee and Mrs. L.R. Mithran did not have any powers to change such decisions or interfere with such decisions.

Contd...2



- 2 -

- (iv) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust (for short 'the ZMCT') for herself or any member of her family, nor has she ever used any of such properties for herself or any member of her family.
- (v) That no donation in cash or kind of by way of draft or cheque from any company, firm or business organization was received through her or due to her.
- (vi) That neither Mrs. L.R. Mithran solicited any donations on behalf of the Trust nor she was authorized to receive any such donation. All donations were received and accounted for by the Treasurer of the ZMCT. No information about receipt of any donation is required to be given to her nor it is ever done.

*[Signature]*  
HLIMPUH  
DEPONENT

Contd...3

:192:

1Re



257  
257

- 3 -

VERIFICATION

I, HLIMPUII, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of JULY, 2002 at SHILLONG

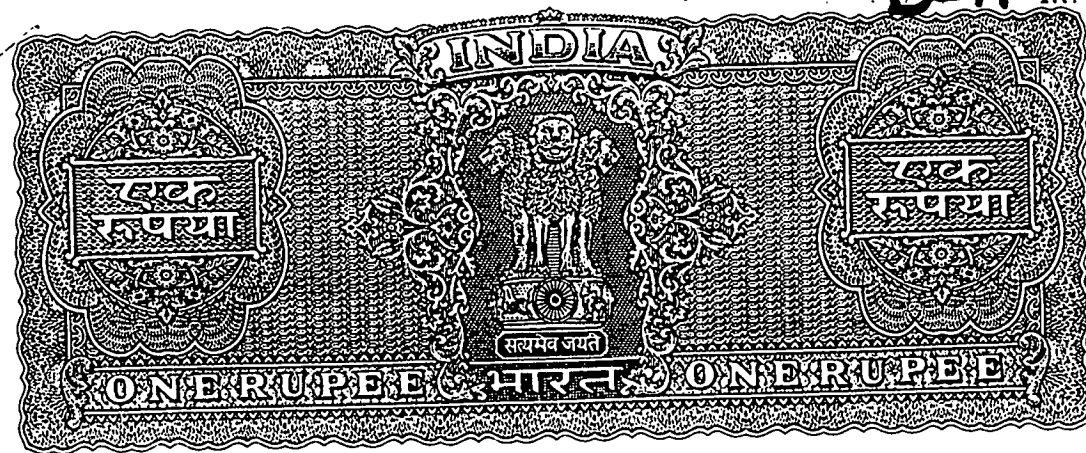
Subscribed by  
H. H. Ahmed  
Advocate.  
25/7/02

Subscribed by  
H. H. Ahmed  
Advocate.  
25/7/02  
HLIMPUII

DEPONENT

Subscribed by  
H. H. Ahmed  
Advocate.  
25/7/02

Subscribed by  
H. H. Ahmed  
Advocate.  
25/7/02  
Magistrate 1st Class  
Shillong.



AFFIDAVIT

I, Esther Lianchhawni, daughter of Late Mr.K.C. Lalzarliana, aged about 37 years, resident of Nongrim Hills, Shillong, Meghalaya, do hereby solemnly affirm and state on oath as under:-

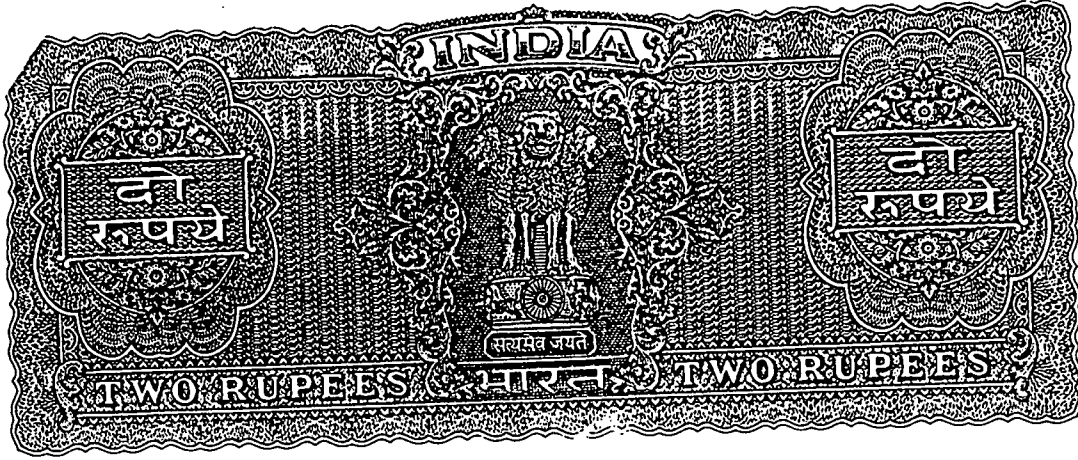
- (i) That I have passed M.A. from N.E.H.U., Shillong, Meghalaya and I am working at present as a Lecturer in the Union Christian College, Barapani, Meghalaya.
- (ii) That I joined Zami Memorial Charitable Trust (for short 'ZMCT') in 2000 and I am the General Secretary of the ZMCT from 2000 till date.

(iii) That ever since I joined the Trust, the trustee, Mrs. L.R. Mithran has never operated the Trust's bank account or drawn any money from the Trust account. All financial matters are handled by our Secretary (Finance) and the Treasurer.

Contd...2

:194:

2RS



- 2 -

(vi) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust for herself or any member of her family, nor has she ever used any of such properties for herself or any member of her family. No donation by draft or cheque or in cash or kind from any Company, firm or business organization was received through her or was due to her solicitation. No intimation is given to her about receipt of any donations by the Trust.

(vii) That Mrs. L.R. Mithran did not solicit donations on behalf of the Trust nor she received any such donation as she had not been authorized to do so by the ZMCT.

(viii) That Mrs. L.R. Mithran had no control over the affairs of the Trust.

ESTHER LIANCHHAWNI

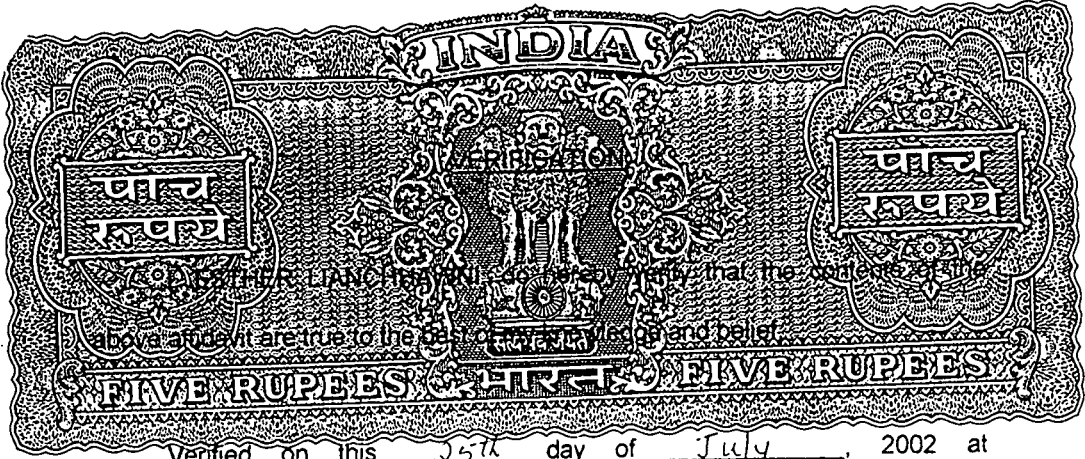
DEPONENT

Contd....3

:195:

5RS

255  
279



Verified on this 25<sup>th</sup> day of July, 2002 at  
Shillong

ESTHER LIANCHHAWNI

- 3 -

VERIFICATION

I, ESTHER LIANCHHAWNI, do hereby verify that the contents of the  
above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of July, 2002 at  
Shillong

ESTHER LIANCHHAWNI

Identified by  
H. H. H. H.  
25/7/02  
Shree H. H. H.  
Advocate.

Solemnly affirmed before me  
by the deponent who is identified  
by Shree H. H. H. Advocate, this day  
the 25<sup>th</sup> July 2002.

25/7/2002  
Magistrate 1<sup>st</sup> Class  
Shillong

:196:

B-12 10RS.

258  
280L. L. Mithran  
25/7AFFIDAVIT

I, L.T. Muani, daughter of Shri V.Lalvuana, aged about 33 years, resident of Law - u sib, Madanriting, Shillong, Meghalaya, do hereby solemnly affirm and state on oath as under:-

- (i) That I am teaching in Mizo High School, Madanriting, Shillong after having done B.A., B.Ed.
- (ii) That I joined Zami Memorial Charitable Trust (for short 'the Trust') from its inception in 1996 and I was holding the post of Secretary (Finance) from 1996 to 1998.
- (iii) That bank account for the Trust was opened by the undersigned, the Treasurer and the President.
- (iv) That the donations received by the Trust from various people were deposited in the account of the Trust by the undersigned and the Treasurer. No information was given or was required to be given to the trustee Mrs. L.R. Mithran about receipt of any donation in cash or kind by the Trust.
- (v) That the trustee, Mrs. L.R. Mithran had never handled the bank account of the Trust, neither she had drawn any money from the Trust's nor had she handled the cash for the Trust, as she was not authorized to do so.
- (vi) That all purchases for the Trust and accounts of the Trust were undertaken by me on behalf of the Trust.

Contd...2

:197:

- 3 -

257  
281

- (vii) That all decisions are taken by the Governing Body/Executive Committee.
- (viii) That the vehicle donated to the Trust is used for charitable work and by the Trust for its own work.
- (ix) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Trust for herself or any member of her family, nor has she ever used any of such property for herself or any member of her family.
- (x) That no donation in cash or kind from any Company, business organization or firm were received through her or due to her. Mrs. L.R. Mithran did not solicit any donations on behalf of the Trust nor she received any such donation.

*Muthi*  
25/7/02  
L.T. MUANI  
DEPONENT

VERIFICATION

I, L.T. MUANI, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of JULY, 2002 at SHILLONG

*Muthi*  
25/7/02  
MUANI  
DEPONENT

Identified by  
*H Ahmed*  
Sheer H. Ahmed  
Advocate.

Solemnly affirmed before me  
by the deponent, who is identified  
by Mr. H. Ahmed Advocate, this day  
the 25<sup>th</sup> July 2002.

*H Ahmed*  
25/7/2002  
Magistrate  
Shillong

:198:

B-13 10RS.

258  
282

### AFFIDAVIT

I, Mrs. Vanlalruati, widow of Lt. Colonel H.S. (Retired), aged about 54 years, resident of Republic Hmar Veng, Aizawl, Mizoram, do hereby solemnly affirm and state on oath as under :-

1. That I was the first General Secretary of Zami Memorial Charitable Trust (for short 'the Trust') from October, 1996 and left Shillong in February, 1998 and had handed over charge. During my tenure as General Secretary, I recorded minutes of meetings and I am aware of the day-to-day activities of the Trust during the said period.
2. That the Committee decided to open a bank account in United Bank of India, Nongthymmai but later decided on a more central and convenient area at Vijaya Bank, Laitumukhrah. The President, Secretary (Finance), Treasure and Assistant General Secretary were authorized by the Committee to operate the said bank account with Vijaya Bank.
3. That neither Mrs.L.R.Mithran nor any member of her family were authorized to operate the said bank account in any manner whatsoever.
4. That Mrs.L.R.Mithran acted as a steadying force and continuing factor of the Trust as the other office bearers have a tenure of two years and being a charitable society, members are free to terminate their involvement and membership at any time. Some members are also likely to be shifted out of Shillong. Hence, Mrs.L.R.Mithran was nominated as a trustee for life so that the Trust will continue to exist and function even when members sign and move out of Shillong.

Contd..2/-

PTD

CONTD -- 2.

199:

283 259

- 2 -

5. That during my tenure, all financial matters were handled by the Secretary (Finance), Secretary, Treasurer and the President, Proper accounts of the available in the office of the Trust.
6. That at no point of during this period did Mrs.L.R.Mithran or any member of her family handle cash of the Trust or operate the account of the Trust.
7. That Mrs.L.R.Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust for the use of herself or any member of her family, nor has she ever used any of such property for herself or any member of her family. No donation in cash or kind from any business organization or firm were received through her or due to her. Neither Mrs.L.R.Mithran solicited any donations on behalf of the Trust. No information or intimation was given or required to be given to her about receipt of any donations whatsoever by our Trust.

  
DEPONENT

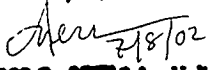
VERIFICATION

I, Mrs. Vanlalruati, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

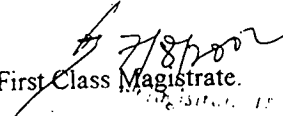
Verified on this 7<sup>th</sup> day of August 2002 at Aizawl.

  
DEPONENT.

Identified

  
SUDHAR P. MEHTA S.A., LL.B.  
Advocate,

Lawyer's Room,  
High District Court,  
Aizawl, Mizoram.

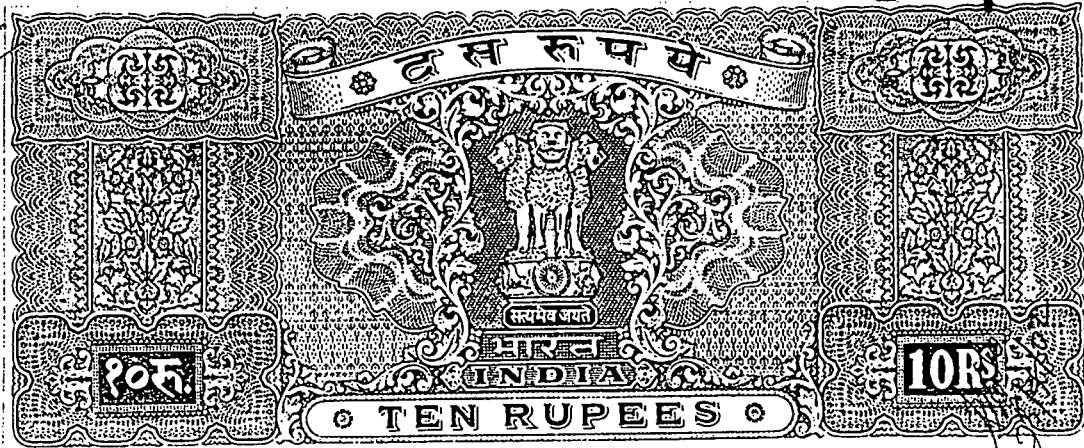
  
First Class Magistrate.

: 200:

B-14 10 Rs.

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AFFIDAVIT

I, Lilypuii, daughter of Mr. Lalpara Sailo, aged about 44 years, resident of Motinagar, Shillong, do hereby solemnly affirm and state on oath as under:-

That I joined Zami Memorial Charitable Trust (for short 'the Trust') in 1998 and was holding the post of Assistant General Secretary from 1998 to 2000. During this period, the trustee Mrs. L.R. Mithran had never operated the bank account of the Trust as she was not authorized to do so. All decisions relating to the Trust were taken by the Governing Body/Executive Committee and Mrs. L.R. Mithran had no control over such decisions. Mrs. L.R. Mithran was neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust (for short 'the Trust') for herself or any member of her family, nor has she ever used any of such property for herself or any member of her family. No donation in cash or kind from any business organization or firm were received through her or due to her. Mrs. L.R. Mithran did not solicit any donations on behalf of the Trust nor she received any such donation. No intimation or information was given or required to be given to her about any donations received by the Trust.

29/7/2002

LILYPUH  
DEPONENT  
Contd....2

:201:

261  
285

- 2 -

VERIFICATION

I, Lilypui , do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

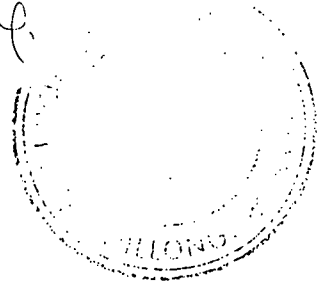
Verified on this 25<sup>th</sup> day of JULY, 2002 at SHILLONG.

Identified by  
H Ahmed 25/7/02  
Shree H Ahmed  
Advocate.

Lilypui  
LILYPUH

Subscribed & sworn before me  
by the deponent who is identified  
by Shree H. Ahmed Advocate  
this day the 25<sup>th</sup> July 2002.

CL 25/7/2002  
Magistrate  
Shillong.

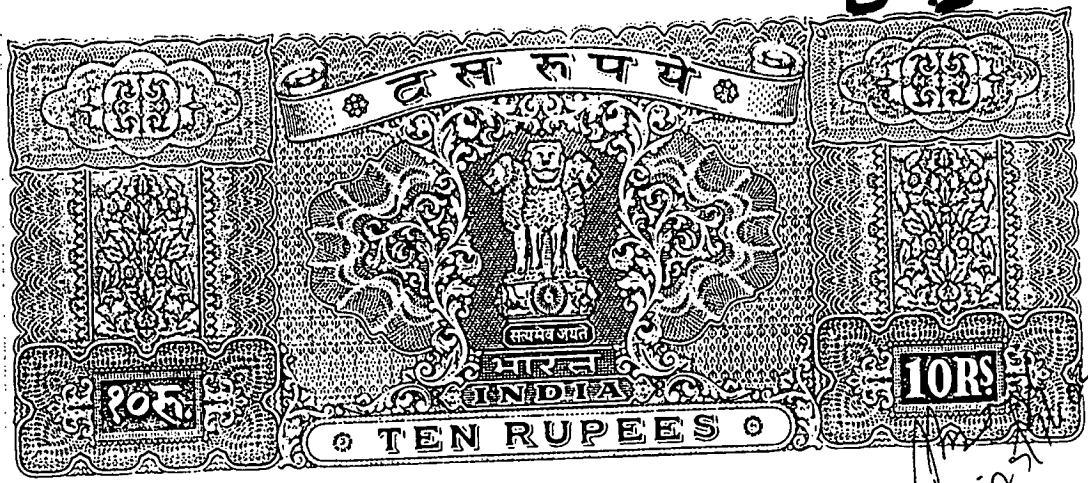


202.

B-15 10Rs.

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AFFIDAVIT BEFORE MAGISTRATE  
1st class, SHILLONG.

25/1/2002

PTU

CONTD ... 2.

- 2 -

203:

263

288

AFFIDAVIT

I, Biaksangi, daughter of VANHLIRA, aged about 47 years, resident of Madanriting, Shilling, do hereby solemnly affirm and state on oath as under:-

- (i) That I joined Zami Memorial Charitable Trust (for short 'the Trust') in 2000.
- (ii) That I have been the Assistant General Secretary of the Trust from 2000 till date.
- (iii) That during this period, the trustee, Mrs. L.R. Mithran has never handled cash or operated the bank account of the Trust as she is not authorized to do so.
- (iv) That the vehicle donated to the Trust is used only for the work of the Trust.
- (v) That all decisions of the Trust are taken by the Governing Body/Executive Committee and Mrs. L.R. Mithran has no controlling powers.
- (vi) That Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust for herself or any member of her family, nor has she ever used any of such property for herself or any member of her family. No donation in cash or kind from any company, business organization or firm was received through her.
- (vii) That neither Mrs. L.R. Mithran solicited any donations on behalf of the Trust nor she received any such donation on behalf of the Trust. No intimation is given or is required to be given to her about any donations received by the Trust from time to time.

*Biaksangi 25/7/02*  
BIAKSANGI  
DEPONENT

VERIFICATION

I, BIAKSANGI, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

Verified on this 25<sup>th</sup> day of JULY, 2002 at SHILLONG.

*Biaksangi 25/7*  
BIAKSANGI

CONFID. -- 3

204:

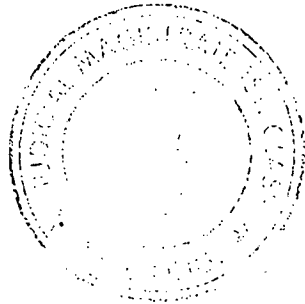
257/2002  
288

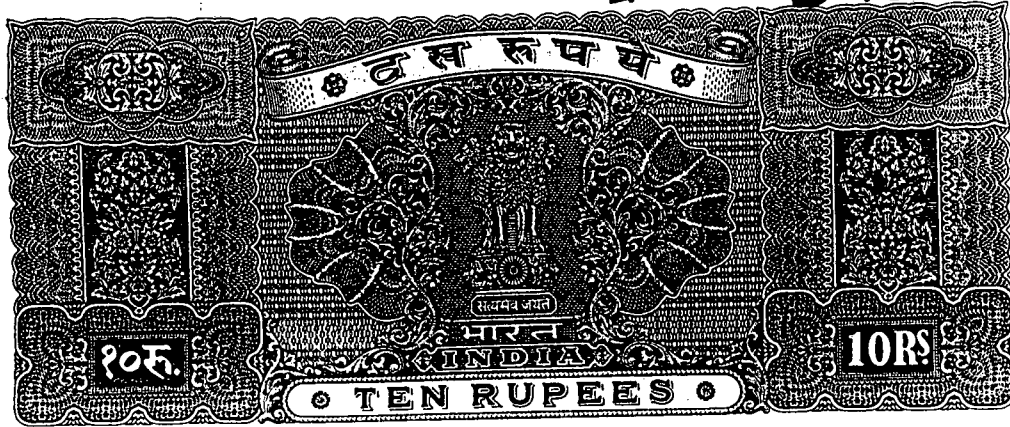
269

Identified by  
~~Habib~~  
25/7/02  
Shari H. Ahmed  
Advocate

Subscribed affirmed before me  
by the deponent who is  
identified by Shari H. Ahmed  
this day the 25<sup>th</sup> July 2002.

~~257/2002~~  
Magistrate 1<sup>st</sup> Class  
Shut up.





### AFFIDAVIT

I, Rose Mary Lalhmangaihzuali, daughter of Shri Hualzika, aged about 32 years, resident of Aizawl, Mizoram, do hereby solemnly affirm and state on oath as under :-

1. That I have done LL.B. from Shillong Law College, Shillong.
2. That I was a member of Zami Memorial Charitable Trust ( for short 'the Trust' ) from its inception and held the Post of Assistant General Secretary in 1996 and 1997 and then the post of General Secretary from 1998 to 2000.
3. That as I am living in Aizawl from 2000, I was again given the charge of the post of General Secretary in 2000.
4. That the Trust was started essentially for the upliftment of women and to help the poor in general.
5. That the trustee, Mrs. L.R. Mithran donated her land at Umbir in the beginning of 1997 and since then the most ambitious objective of the Trust is to set up a free de-addiction home for all the people of North East.
6. That since inception of the Trust, the trustee Mrs. L.R.Mithran had ever drawn any amount from the bank account of the Trust as she was not authorized to do. All matters relating to expenditure are discussed and passed by the Executive Committee.

Contd...2/-

*[Handwritten signature]*

CONTD - 2

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- 2 -

290

7. That the Vehicle donated to the Trust is used purely for the purposes and work of the Trust.
8. That Mrs.L.R.Mithran is neither authorized to use any movable or immovable property of the Zami Memorial Charitable Trust for herself or any member of her family, nor has she ever used any of such property for herself or any member of her family.
9. That no donation in cash or kind from any company or business organization or firm were received through her or due to her. Neither Mrs.L.R.Mithran solicited any donations on behalf of the Trust nor she received any such donation. No information or intimation was given to her about any donations received by us in the name of the Trust.

  
DEPONENT.

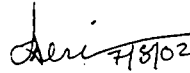
VERIFICATION


I, Rose Mary Lalhmangaihzuali, do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief.

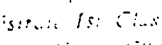
Verified on this 7th day of August 2002 at Aizawl.

  
DEPONENT.

Identified by me :

  
DINARI T. AIYU B.A., LL.B.  
Advocate.  
Lawyer's Inn.  
Near District Court.  
Aizawl, Mizoram.

  
First Class Magistrate.

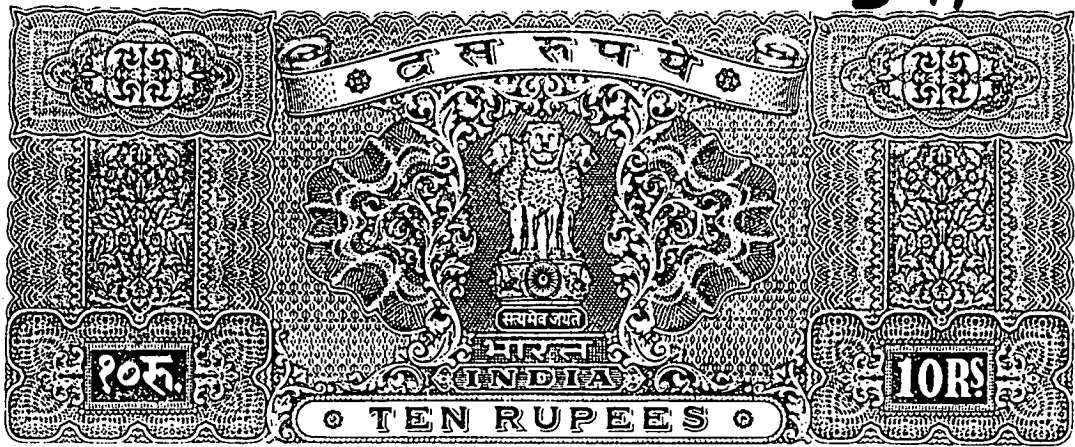
  
First Class Magistrate.

:207:

B-17 10RS.

267

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### AFFIDAVIT

I Shri H.S. Kumbhat s/o late S.R. Kumbhat, aged 62 years residing at S. Senapati Road,, Guwahati (Assam); partner H.S. Kumbhat & Co. Chartered Accountants, Guwahati do hereby state on solemn affirmation as under :

1. that H.S. Kumbhat & Co. where I am a partner have been auditing the accounts of ZAMI MEMORIAL CHARITABLE TRUST, AIZWAL (Mizoram) since inception.
2. that the administration and finances of the Trust are looked after by the office bearers i.e President, General Secretary, Finance Secretary and Treasurer.
3. that the accounts are maintained by the Finance Secretary and Treasurer and are checked by the President and General Secretary regularly.

22/1/2002

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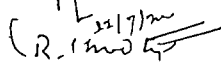
268

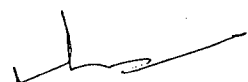
292

-2-

4. that the bank accounts are operated upon by any two of the above office bearers.
5. that we have not observed any malpractice, fraud, misappropriation or unusual expenditure or payment in the said Trust during course of our audit.
6. that I have attended the general meetings of the Trust occasionally and have noted that total details of accounts and transactions including inventories are read out to the members in the meeting by the Finance Secretary and Treasurer.
7. That I confirm that whatsoever has been stated above is true to my knowledge and belief and I sign this affidavit on the request of the Trust, on this 19th 22nd day of July, 2002.

Executant is identified  
by me

  
Advocate

  
H.S. Kumbat  
Executant/Deponent

Sworn by the executant  
before me

  
22/7/2002  
Magistrate

Questions put to the Defence Witness by the Defence Assistant.

Qn. Are you looking after the legal matters in the Central Excise, Comm'te, Shillong?

Ans. Yes, at present I am looking after the legal matters.

Qn. Is it correct that Mrs. L.R. Mithran, Commissioner, Central Excise, Shillong decided a Show Cause Notice against M/s Kit Ply Industries vide adjudicating order dated 15.12.96 in which she confirmed the demand of Rs.8,23,40,448 as against the amount of Rs. 35,79,07,804 demanded in the show cause notice?

Ans. Yes it is true.

Qn. Is it correct that the CEGAT reduced this amount further to Rs. 58,96,580 only plus penalty of Rs. 10 lakhs vide order dated 15.6.99?

Ans. Yes, it is correct.

Qn. I am showing you the certified copy of the CEGAT order dated 15.6.99. Is this the order?

Ans. Yes, this is the order passed by the CEGAT. The certified copy of the order was submitted to the Inquiry Officer as Defence Exhibit.

Qn. Did the Department i.e. Commissioner of Central Excise, Shillong files an appeal to the Supreme Court against this order in the Hon'ble CEGAT.

Ans. Yes, it is correct.

Qn. Has the appeal decided by the Supreme Court?

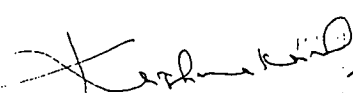
Ans. Yes. It has been decided by the Department. The Supreme Court has dismissed the Appeal filed by the Department.

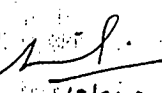
Qn. I am showing you a copy of the Supreme Court order, is it the same order?

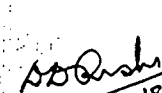
An. Yes, this is the same order.

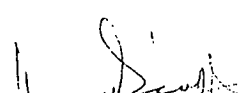
A copy of the Supreme Court order was submitted and taken on record as Defence Exhibit.

The presenting officer did not wish to cross-examine the witness.

  
(Krishna Kant)  
Inquiring Authority

  
(S.V. Singh)  
Presenting Officer

  
(D.D. Rishi)  
Defence Assistant

  
(T.Haokip)  
Addl. Commr (Shillong)

Questions put to the Defence Witness by the Defence Assistant.

Qn. Is it true that you have been auditing the records of Zami Memorial Charitable Trust since 1996?

Ans. Yes. It is true that I have been auditing the accounts of the Trust since 1996.

Qn. Are you a Chartered Accountant?

Ans. Yes. I am a Chartered Accountant.

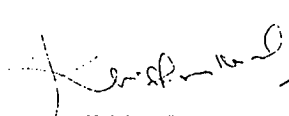
Qn. Did you come across any instance where the movable and immovable property of Zami Memorial Charitable Trust was used for the benefit of Mrs. L.R. Mithran or any member of her family?

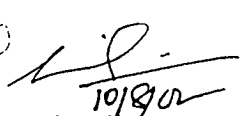
Ans. No. I have not come across any such instance.

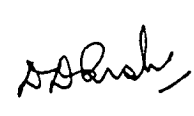
Qn. Did you come across any transaction where movable or immovable property or cash or anything of ZMCT was used for any purpose other than the purpose for which the trust was created?

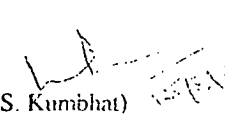
Ans. No. I have not come across any such transaction.

The presenting officer did not wish to cross-examine the defence witness.

  
(Krishna Kant)  
Inquiring Authority

  
(S.V. Singh)  
Presenting Officer

  
(D.D. Rishi)  
Defence Assistant

  
(H.S. Kumbhat)  
Defence Witness.

:211:

C-3

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Record of examination and cross-examination of Shri Alan R. Mithran.

Questions put by Defence Assistant.

Qn. Are you or have ever employed by M/s Kitply Industries Ltd.?

Ans. No. I was only in temporary assignment with them for about 3 months.

Qn. What was your assignment with Kitply Industries Ltd.?

Ans. Many of my friends were engaged in coal business. I also thought to join the same business and through my friends I came in contact with Shri S.N. Jagodia of M/s Kitply Industries, who were already in the business of coal export and look for some one to further their coal business through Ghasuapara at Tura. Having convinced of my potential they engaged me temporarily for 3 months on trial basis vide their letter dated 25.7.97 and also provided me facilities like accommodation, transport, electricity and phone etc. in order to promote their business.

Qn. Did your mother Mrs. L.R. Mithran helped you in getting this assignment/engagement with M/s Kitply Industries Ltd.

Ans. No.

Qn. Did you informed her of this engagement with M/s Kitply Inds. Ltd.

Ans. No.

Qn. Did your mother helped you in getting a job or business anywhere else?

Ans. No. After my graduation I have been on my own and living independently. I completed my graduation in 1993.

Qn. Did you say categorically that your mother did not help you in any manner whatsoever in getting any job, engagement, assignment or work of any type.

Ans. No.

Qn. Are you keeping your mother informed about the jobs or assignments you took after your graduation.

Ans. No.

Cross-examination by Presenting Officer.

Qn. After coming to Shillong in May, 1997 were you staying alone or with your mother?

Ans. I was staying with my mother.

Qn. Did you come across any other exporters of coal other than M/s Kitply Inds. Ltd. while exploring the potential of coal business.

Ans. Yes I did.

Qn. Can you name a few.

Ans. Eastern Mining and Coal Company was one of such companies.

✓ Qn. Did you come across M/s Kitply Inds. Was it that there was some advertisement by M/s Kitply? 206

Ans. There was no advertisement or anything like that. I was moving around with some of the known people in the coal business. I happened to come across Mr. S.N. Jagodia.

Qn. Did you inform your mother while moving from Shillong to Tura consequent upon the assignment by M/s Kitply Inds.

Ans. Not really.

Qn. Is it that normal you did not keep your mother posted about your long stay from residence more so when you were staying with her.

Ans. Like I said in the beginning I did everything independently and I did not find any reason often to tell every one including my mother about my work.

Qn. You got an offer from M/s Kitply Industries through a letter dt. 25.7.97 signed by President Commercial Mr. S.N. Jaodia. Can you tell how you receive this communication.

Ans. A letter came.

Qn. The letter has been addressed to Mr. Alan R. Mithran, Nongrim Hills, Shillong, Meghalaya. Was it the address where you were staying with your mother.

Ans. Yes.

Qn. Did you get the letter personally at home.

Ans. Yes.

Qn. Did you not give this good news of getting an assignment to your mother and other family members for which you were longing for?

Ans. It is not true to suggest that I was looking for such a friend for a long time. As it happened to come I took like it as any other work in the past.

Qn. In your affidavit you have stated that you are having your independent business since 1998 at Aizwal. Can you tell the details of such business.

Ans. I am dealing in flooring and sealing materials and ply board bamboo/plywood.

Qn. Do you hold any agency for plywood business.

Ans. No.

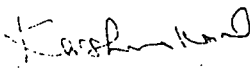
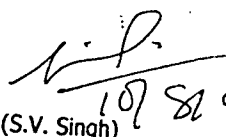
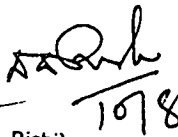

Re-examination by Defence Assistant Dr. D.D. Rishi.

Qn. You have stated that in May, 1997, you were staying with your mother, then you have also stated that you have been living independently. Does it mean that even when you are staying in the house of your mother you were staying independently. Did you imply that you are staying only in the house of your mother. Will you like to clarify further?

Ans. No. After coming back from Bangalore in May I did not have a room/place. Being independent, I thought it wise to stay in our family use, i.e. our mother's place.

Qn. During the period you were staying in your mother's home, did you keep her informed about of your activities. 297

Ans. No.

 (Krishna Kant) Inquiring Authority	 (S.V. Singh) Presenting Officer	 (D.D. Rishi) Defence Assistant	 (Alan R. Mithran) Defence Witness.
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Record of examination and cross-examination of Mrs. Laldawni.

Questions by Defence Assistant.

Qn. In what way are you associated with Zami Memorial Charitable Trust?

Ans. When the Trust has started I was the Vice President of the Trust. I continue to be the member of the Trust.

Qn. During the period you have been associated with the Trust, did Mrs. L.R. Mithran have any control over the decisions of the Governing Body?

Ans. No. the decisions were taken by the governing body.

Qn. Was Mrs. L.R. Mithran authorized to handle the bank account, properties or cash of the Trust?

Ans. No. Mrs. Mithran did not handle the cash, property or bank account of the Trust.

Qn. Were the properties of the Trust used for purposes other than charitable purposes?

Ans. No. She did not use any property, vehicle or money of the Trust for her personal purpose or for the purpose of any member of her family.

Qn. Did Mrs. L.R. Mithran or any member of her family ever used any movable or immovable property of the Trust?

Ans. No. It was used only for charitable purposes.

Qn. Did Mrs. L.R. Mithran solicit any donation in cash or in kind from any Company, business house or organization for the Zami Memorial Charitable Trust?

Ans. No.

Qn. Were any donations in cash or kind received from any company, business house or organization through Mrs. L.R. Mithran?

Ans. No. Mrs. Mithran did not ask for any donation or money from anybody for the trust.

Qns. Was information given or required to be given to Mrs. L.R. Mithran about the donations received by Zami Memorial Charitable Trust?

Ans. No.

Qn. Was Mrs. L.R. Mithran involved in day-to-day affairs of the Trust and regularly participated in its activities?

Ans. No. She did not participate in the day-to-day affairs of the Trust and the office bearers were looking after the affairs of the trust.

*Laldawni*

Qn. Did Mrs. L.R. Mithran have any direct or indirect control over the affairs of the Trust?

Ans. The control of the trust was with the governing body and not with Mrs. Mithran.

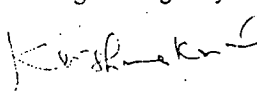
Qn. Do you have anything more to say about the Zami Memorial Charitable Trust?

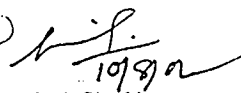
Ans. The Trust is doing charitable work and will continue to do it.

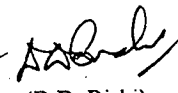
Cross-examination by Presenting Officer.

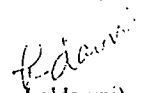
Qn. You have stated that Mrs. L.R. Mithran was not informed of the donations received by the Trust. Rule 37 of the ZMC Trust provides for approval of all receipts by the governing body in general and of the Trustees in specific. Did you say in spite of this rule the receipts to the Trust were not brought to the notice of Mrs. Mithran?

Ans. Yes. The Trustees are required to be informed, but the money will not flow to Mrs. Mithran. I have to further clarify that trustees are part of the governing body and I am a member of the governing body.

  
Krishna Kant  
Inquiring Authority

  
(S.V. Singh)  
Presenting Officer

  
(D.D. Rishi)  
Defence Assistant

  
(Mrs. Laldawni)  
Defence Witness.

Record of examination and cross-examination of Mrs. Lalpam Zauvi.

Questions by Defence Assistant.

Qn. In what way are you associated with Zami Memorial Charitable Trust?

Ans. I am the first president of the trust and I continue a member of the trust.

Qn. During the period you have been associated with the Trust, did Mrs. L.R. Mithran have any control over the decisions of the Governing Body?

Ans. No.

Qn. Was Mrs. L.R. Mithran authorized to handle the bank account, properties or cash of the Trust?

Ans. No.

Qn. Were the properties of the Trust used for purposes other than charitable purposes?

Ans. No.

Qn. Did Mrs. L.R. Mithran or any member of her family ever used any movable or immovable property of the Trust?

Ans. No.

Qn. Did Mrs. L.R. Mithran solicit any donation in cash or in cash from any Company, business house or organization for the Zami Memorial Charitable Trust?

Ans. No.

Qn. Were any donations in cash or kind received from any company, business house or organization through Mrs. L.R. Mithran?

Ans. No. Mrs. Mithran did not ask for any donation or money from anybody for the trust.

Qns. Was information given or required to be given to Mrs. L.R. Mithran about the donations received by Zami Memorial Charitable Trust?

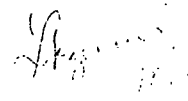
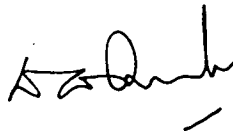
Ans. No.

Qn. Was Mrs. L.R. Mithran involved in day-to-day affairs of the Trust and regularly participated in its activities?

Ans. The governing body was involved in day-to-day affairs of the Trust and not the Mrs. L.R. Mithran.

Qn. Did Mrs. L.R. Mithran have any direct or indirect control over the affairs of the Trust?

Ans. No.



Qn. Do you have anything more to say about the Zami Memorial Charitable Trust?

Ans. All the decisions and activities of the Trust are undertaken by the office bearers of the Trust and generally it is not possible for us to inform any individual member of the trust particularly Mrs. L.R. Mithran who is being a Government servant is not available for all the time.

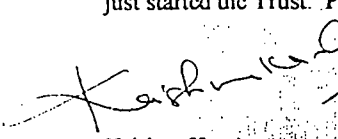
Question by Presenting Officer

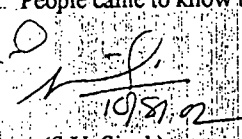
Qn. In your affidavit you have stated that you were the first president of the Trust from October, 96. The Trust has come into by registration only on 26.11.96. How do you say that were the president of the trust since October?

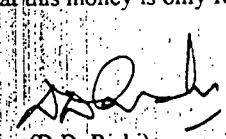
Ann. Any society first decide who is going to be president, treasurer and other office bearers and then come for registration of the Trust. She says no registration can be applied unless a body formed.

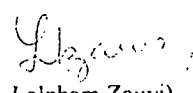
Qn. In your affidavit you have stated that a donation of Rs. 1 lakhs was received from unknown sources. Please clarify, whether you find out this source of money.

An. The point of the receipt of donation was not known. It was come by post and any person can donate a money to the Trust. We were very happy to receive the donation because we have just started the Trust. People came to know that this money is only for charitable purposes.

  
Krishna Kant)  
Inquiring Authority

  
(S.V. Singh)  
Presenting Officer

  
(D.D. Rishi)  
Defence Assistant

  
(Mrs. Lalpam Zauvi)  
Defence Witness.

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Record of examination and cross-examination of Ms. Lalneihchawngi.

Questions by Defence Assistant.

Qn. In what way are you associated with Zami Memorial Charitable Trust?

Ans. I was treasurer of the trust from 1998 to 2000. Presently I am an ordinary member.

Qn. During the period you have been associated with the Trust, did Mrs. L.R. Mithran have any control over the decisions of the Governing Body?

Ans. No.

Qn. Was Mrs. L.R. Mithran authorized to handle the bank account, properties or cash of the Trust?

Ans. No.

Qn. Were the properties of the Trust used for purposes other than charitable purposes?

Ans. No. Funds were used only for charitable purposes.

Qn. Did Mrs. L.R. Mithran or any member of her family ever used any movable or immovable property of the Trust?

Ans. No.

Qn. Did Mrs. L.R. Mithran solicit any donation in cash or in kind from any Company, business house or organization for the Zami Memorial Charitable Trust?

Ans. No.

Qn. Were any donations in cash or kind received from any company, business house or organization through Mrs. L.R. Mithran?

Ans. No.

Qn. Was Mrs. L.R. Mithran involved in day-to-day affairs of the Trust and regularly participated in its activities?

Ans. No.

Qn. Did Mrs. L.R. Mithran have any direct or indirect control over the affairs of the Trust?

Ans. No.

Qn. Do you have anything more to say about the Zami Memorial Charitable Trust?

Ans. No.

The presenting officer did not wish to cross-examine the witness.

(Krishna Kant)  
Inquiring Authority

(S.V. Singh)  
Presenting Officer

(D.D. Rishi)  
Defence Assistant

(Lalneihchawngi)  
Defence Witness.

Record of examination and cross-examination of Ms. Darthahneing.

Questions by Defence Assistant.

Qn. In what way are you associated with Zami Memorial Charitable Trust?

Ans. I am treasurer of the trust from 2000 till date.

Qn. During the period you have been associated with the Trust, did Mrs. L.R. Mithran have any control over the decisions of the Governing Body?

Ans. No.

Qn. Was Mrs. L.R. Mithran authorized to handle the bank account, properties or cash of the Trust?

Ans. No.

Qn. Were the properties of the Trust used for purposes other than charitable purposes?

Ans. No. Funds were used only for charitable purposes.

Qn. Did Mrs. L.R. Mithran or any member of her family ever used any movable or immovable property of the Trust?

Ans. No.

Qn. Did Mrs. L.R. Mithran solicit any donation in cash or in kind from any Company, business house or organization for the Zami Memorial Charitable Trust?

Ans. No.

Qn. Were any donations in cash or kind received from any company, business house or organization through Mrs. L.R. Mithran?

Ans. No.

Qn. Was Mrs. L.R. Mithran involved in day-to-day affairs of the Trust and regularly participated in its activities?

Ans. No.

Qn. Did Mrs. L.R. Mithran have any direct or indirect control over the affairs of the Trust?

Ans. No.

Qn. Do you have anything more to say about the Zami Memorial Charitable Trust?

Ans. No.

The presenting officer did not wish to cross-examine the witness.

(Krishna Kant)  
Inquiring Authority

(S.V. Singh)  
Presenting Officer

(D.D. Rishi)  
Defence Assistant

(Darthahneing)  
Defence Witness.

Questions by Defence Assistant.

Qn. In what way are you associated with Zami Memorial Charitable Trust?

Ans. Previously I was Financial Secretary of the Trust and at present I am ordinary member..

Qn. During the period you have been associated with the Trust, did Mrs. L.R. Mithran have any control over the decisions of the Governing Body?

Ans. No.

Qn. Was Mrs. L.R. Mithran authorized to handle the bank account, properties or cash of the Trust?

Ans. No.

Qn. Were the properties of the Trust used for purposes other than charitable purposes?

Ans. No.

Qn. Did Mrs. L.R. Mithran or any member of her family ever used any movable or immovable property of the Trust?

Ans. No.

Qn. Did Mrs. L.R. Mithran solicit any donation in cash or in kind from any Company, business house or organization for the Zami Memorial Charitable Trust?

Ans. No.

Qn. Were any donations in cash or kind received from any company, business house or organization through Mrs. L.R. Mithran?

Ans. No.

Qn. Was Mrs. L.R. Mithran involved in day-to-day affairs of the Trust and regularly participated in its activities?

Ans. No. She never attended the committee meetings as she was always out of station.

Qn. Did Mrs. L.R. Mithran have any direct or indirect control over the affairs of the Trust?

Ans. No.

Qn. Do you have anything more to say about the Zami Memorial Charitable Trust?

Ans. No.

The presenting officer did not wish to cross-examine the witness.

(Krishna Kant)  
Inquiring Authority

(S.V. Singh)  
Presenting Officer

(D.D. Rishi)  
Defence Assistant

(L.T. Muani)  
Defence Witness.

Record of examination and cross-examination of Ms. Lawremawii.

Questions by Defence Assistant.

Qn. In what way are you associated with Zami Memorial Charitable Trust?

Ans. I am Secretary (Properties).

Qn. During the period you have been associated with the Trust, did Mrs. L.R. Mithran have any control over the decisions of the Governing Body?

Ans. No.

Qn. Was Mrs. L.R. Mithran authorized to handle the bank account, properties or cash of the Trust?

Ans. No.

Qn. Were the properties of the Trust used for purposes other than charitable purposes?

Ans. No.

Qn. Did Mrs. L.R. Mithran or any member of her family ever used any movable or immovable property of the Trust?

Ans. No.

Qn. Did Mrs. L.R. Mithran solicit any donation in cash or in kind from any Company, business house or organization for the Zami Memorial Charitable Trust?

Ans. No.

Qn. Were any donations in cash or kind received from any company, business house or organization through Mrs. L.R. Mithran?

Ans. No.

Qn. Was Mrs. L.R. Mithran involved in day-to-day affairs of the Trust and regularly participated in its activities?

Ans. No.

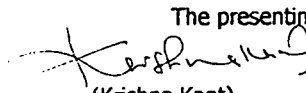
Qn. Did Mrs. L.R. Mithran have any direct or indirect control over the affairs of the Trust?

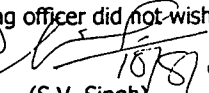
Ans. No.

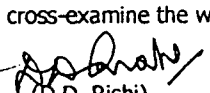
Qn. Do you have anything more to say about the Zami Memorial Charitable Trust?

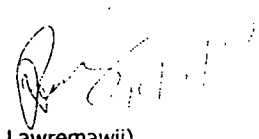
Ans. We will continue our charitable work till we live.

The presenting officer did not wish to cross-examine the witness.

  
(Krishna Kant)  
Inquiring Authority

  
(S.V. Singh)  
Presenting Officer

  
(D.D. Rishi)  
Defence Assistant

  
(Ms. Lawremawii)  
Defence Witness.

Questions by Defence Assistant.

Qn. In what way are you associated with Zami Memorial Charitable Trust?

Ans. I was First Treasurer of the Trust. At present I am executive committee member of the Trust.

Qn. During the period you have been associated with the Trust, did Mrs. L.R. Mithran have any control over the decisions of the Governing Body?

Ans. No.

Qn. Was Mrs. L.R. Mithran authorized to handle the bank account, properties or cash of the Trust?

Ans. No. Treasurer and Financial Secretary and Secretary used to handle the money and property.

Qn. Were the properties of the Trust used for purposes other than charitable purposes?

Ans. No.

Qn. Did Mrs. L.R. Mithran or any member of her family ever used any movable or immovable property of the Trust?

Ans. No.

Qn. Did Mrs. L.R. Mithran solicit any donation in cash or in kind from any Company, business house or organization for the Zami Memorial Charitable Trust?

Ans. No.

Qn. Were any donations in cash or kind received from any company, business house or organization through Mrs. L.R. Mithran?

Ans. No.

Qn. Was Mrs. L.R. Mithran involved in day-to-day affairs of the Trust and regularly participated in its activities?

Ans. No. She never attended the committee meetings as she was always out of station.

Qn. Did Mrs. L.R. Mithran have any direct or indirect control over the affairs of the Trust?

Ans. No.

Qn. Do you have anything more to say about the Zami Memorial Charitable Trust?

Ans. No.

The presenting officer did not wish to cross-examine the witness.

(Krishna Kant)  
Inquiring Authority

(S.V. Singh)  
Presenting Officer

(D.D. Rishi)  
Defence Assistant

(Mrs. L. Chungnungi)  
Defence Witness.

**Record of examination and cross-examination**  
**of Mrs. L.R. Mithran**

Record of the questions put to Mrs. L.R. Mithran and her replies thereto are recorded as under:-

Q. It has been alleged by the Department that you floated a Trust, namely, Zami Memorial Charitable Trust in the name of your mother in between the hearing of the case of M/s. Kitply Industries Limited on 17.09.1996 and passing of the order on 05.12.1996 in order to receive benefits from M/s. Kitply Industries Ltd. through indirect route. Why is it that this Trust came into existence during that period?

R. I have been in the Department since 34 years. During these long years, I have adjudicated thousands of cases. I have been engaged in charitable work and many a times, my charitable activities might have been during the time when one or more cases were pending for adjudication before me. Therefore, there is no link between the Trust and adjudication of the case of M/s. Kitply Industries Limited.

Q. When the Zami Memorial Charitable Trust was created, did you have only the case of M/s. Kitply Industries Limited pending before you?

R. No. There were hundreds of cases.

Q. Is there any nexus between the adjudication of the cases of M/s. Kitply Industries Limited and the creation of the Trust?

- R. There is absolutely no connection. It is just incidental that the Trust came into existence at that time. In fact, I had hundreds of other cases pending before me at that time.
- Q. What is then the reason that the Department has tried to allege a nexus between the adjudication order of M/s. Kitply Industries Ltd. and the creation of Zami Memorial Charitable Trust?
- R. It is just because that it was one of the biggest of cases decided at Shillong which involved an allegation of evasion of duty of about Rs.36 Crores. As I had held that only about Rs.8 Crores approximately was recoverable, the Department suspected that I had confirmed a lesser amount for an illicit consideration.
- Q. Did not quantifying the amount of evasion at Rs.8 Crores approx. as against Rs.36 Crores alleged in the show cause notice, amount to showing undue favour to M/s. Kitply Industries Limited?
- R. No. Very purpose of adjudication is to quantify the correct amount of duty payable by the assessee. It is not necessary that whatever has been demanded in the show cause notice should be confirmed. In fact, it has been my experience for the last 34 years of my service that show cause notices are issued for highly inflated amounts as some of the departmental officers want to take credit for having detected huge amounts of evasion.
- Q. In what way can you justify that your quantification of the duty liability of M/s. Kitply Industries Limited did not amount to showing them undue favour?

- R. This matter had been taken to the Hon'ble CEGAT where the duty liability of M/s. Kitply Industries Limited in this case was reduced to about Rs.59 lakhs, plus a penalty of Rs.10 lakhs. Therefore, it is obvious that the quantification of duty liability of M/s. Kitply Industries Limited by me was much higher than what has finally been decided by the Appellate Authority. Therefore, it cannot be said that I had shown any undue favour to M/s. Kitply Industries Limited.
- Q. Is it true that you have been associated with the Trust as one of the promoters of the Trust and you yourself deposited registration fee of Rs.250?
- R. Yes.
- Q. It has been alleged that you obtained registration under "hurried persuasion" with intention to receive benefits urgently. What do you say to that?
- R. The application for the Trust was given in the normal course and the Registrar of Societies, Government of Meghalaya, issued the certificate in usual course. The Registrar of Societies, Government of Meghalaya, Shillong is a highly placed civil servant and nothing bars him from acting efficiently and issuing the registration certificate without delay. We did not determine the time which he should take for issuing the certificate.
- Q. Was the Zami Memorial Charitable Trust created for the benefit of yourself and members of your family as you have been associated with the Trust as a permanent trustee?

R. The Trust was created for the benefit of women and children.

I and my family are trustees and no beneficiaries. In fact, I have donated my land to the Trust. There is no question of myself or any members of my family benefitting from the Trust. The rules and regulations of the Trust do not permit the same.

Q. Did you have absolutely authority over the said Trust?

R. No. All the decisions of the Trust are taken by the Governing Body. I did not have any control over the decisions of the Governing Body.

Q. It has been alleged that all powers originated from you and ended with you so far as the said Trust was concerned.

S. That is not true. The affairs of the Trust are looked after by the Governing Body and I have no control over their decisions.

Q. Did you participate in day-to-day affairs of the Trust?

R. No.

Q. Do you know Shri S.P. Goenka of Ms Kitply Industries limited?

R. I do not remember. I have dealt with thousand of assesses and their representatives and it is not possible for to remember any particular representative of any particular assessee.

Q. Did you solicit any donations from Ms Kitply Industries Limited or Ms Warren Tea Limited for the Zami Memorial Charitable Trust?

R. No I never solicited any donations for the said Trust or any other Trust.

Q. Did you received a draft of Rs. 1 lakh in the name of Zami Memorial Charitable Trust from an unidentified and unknown person?

R. No. I never received any cash, draft or cheque meant for Zami Memorial Charitable Trust.

Q. How was the draft of Rs. 1 lakh in the name of the Trust received?

R. I am not aware of it. However, during the course of this inquiry, I came to know that it was received by post in the Trust's office.

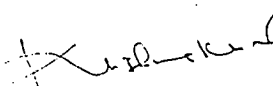
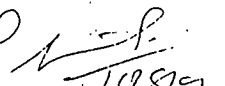
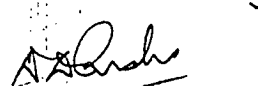
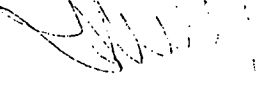
Q. Did the concerned office bearers of the trust inform you about their having received the demand draft and a Tata diesel vehicle for use of the Trust at the relevant time?

R. No.

Q. Did you secure employment of your son, Mr. A.R. Mithran, with M/s. Kitply Industries Limited?

R. No. My son was 25 years of age at the relevant time. As a self-respecting mother, I would never beg anybody for employment of my children. They are competent enough by themselves. In fact, my son was independent and grown-up and I was not even aware of his whereabouts at the relevant time. He lived on his own since he attained majority.

The Presenting officer did not wish to cross examine Mrs. L.R. Mithran as defence witness.

			
(Krishna Kant)	(S.V. Singh)	(D.D. Rishi)	(Mrs. L.R. Mithran)
Inquiry Authority	Presenting Officer	Defence Assistant	Charged Officer

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A-5.

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



Attended  
Leave copy  
19/03/04  
Superintendent (Tech-I)  
Central Excise : : : : :  
Shillong Division

(R. K. Sarma)  
Superintendent (Tech-I)  
Central Excise : : : : :  
Shillong Division

1st Floor, Crescens Building, MG Road, Shillong – 793001,  
Phone: 0364-2500131. Fax: 0364-2224747.

CONFIDENTIAL

C.O. II(10)1.CCO.SH.2004

Dated:-

3 MAR 2004

To

Smt. L.R.Mithran  
Commissioner of Customs & Central Excise (Retd.)  
Shillong

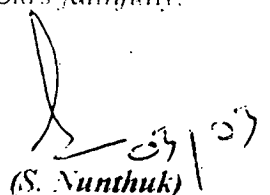
Madam,

Subject:- Disciplinary proceedings against Smt. L.R. Mithran, Commissioner,  
(Retd) – reg.

Please find enclosed herewith a copy of the LO's report received from Rajiv Rai,  
Deputy Secretary to the Govt. of India, Ministry of Finance, Department of Revenue,  
New Delhi vide his F.NO.C-14011/39/2001-Ad.V-671 dated 23.02.04.

Encls:- As above (1 – 61)

Yours faithfully,

  
(S. Nunthuk)

Additional Commissioner  
Tele Fax:- 0364-2502047

## INQUIRY REPORT

Government of India in the Ministry of Finance, Department of Revenue vide order F.No.C-14011/39/2001-Ad.V/378-85 dated 13.3.2002 appointed the undersigned as Inquiry Authority to inquire into the charges framed against Mrs. L.R. Mithran, Commissioner of Central Excise (Appeals), Guwahati.

1. In this case, a Charge Sheet was issued to Mrs. L.R. Mithran, who at the relevant time was functioning as Commissioner of Central Excise, Shillong, vide Ministry's F.No. C-14011/39/2001 - Ad. V dated 13<sup>th</sup> December, 2001, and an inquiry was ordered to be held under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

2. The facts as alleged in the Charge Sheet are as under:

(i) That Mrs. L.R. Mithran, IRS, alias PI Lalpari was posted and functioning as Commissioner, Central Excise, Shillong during the period year 1996/97. In the year 1996, said Mrs. L. Mithran obtained valuable thing without consideration from Shri S.P. Goenka, Chairman M/s. Kitply Industries Limited and Advisor to the Board of Directors M/s. Warren Tea Limited, during adjudication proceeding of M/s. Kitply Industries Limited, Kolkata and thereby committed departmental misconduct.

(ii) Mrs. L.R. Mithran, IRS adjudicated the Excise Evasion Duty case of M/s. Kitply Industries Limited, Kolkata in the year 1996 which was detected in 1994 by the official (s) of the Directorate General, Anti Evasion (DGAE), Kolkata, and the same was forwarded to the Shillong Commissionerate as the factory premises of the said firm fall within the jurisdiction of Shillong.

(iii) During the pendency of the adjudication proceedings, Mrs. L.R. Mithran, IRS established Zami Memorial Charitable Trust on 12.10.1996 in the name of her Late Mother (Zami) and obtained certificate of registration bearing No.SR/ZMCT-730/96 of 1996 dated 27.11.1996 from the Registrar of Societies, Government of Meghalaya, Shillong.

(iv) As per the Memorandum of Association of the above Trust, all direct descendants of PI Zami shall be Trustees and her father P.U.K.T. Khuma shall be Chief Patron of the Trust for life. As such Mrs. L.R. Mithran, IRS alias PI Lalpari was one of the main Trustees of Zami Memorial Charitable Trust.

(v) Shri Shanti Prasad Goenka alias S.P. Goenka was/is the Chairman of M/s.Kitply Industries Limited, Kolkata and Advisor to the Board of Directors of M/s. Warren Tea Limited, Kolkata, the two companies being controlled by S/shri P.K. Goenka and V.K. Goenka, sons of Shri S.P. Goenka.

(vi) On 17.09.1996, Shri S.P. Goenka in the capacity of Chairman, M/s. Kitply Industries Limited attended the preliminary inquiry along with other officials of the

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Company at Shillong which was heard by Mrs. L.R. Mithran, IRS, Commissioner, Central Excise, Shillong.

(vii) Shri S.P. Goenka, Chairman, M/s. Kitply Industries Limited and Advisor to the Board of Directors of M/s. Warren Tea Limited and during pendency of the adjudication proceedings gifted one Tata Mobile vehicle having registration No. ML-05-B-2648 to the aforesaid Zami Memorial Charitable Trust, Shillong through Himmat Singka Auto Enterprises Limited, Guwahati which was purchased vide money receipt No. 2514 dated 09.11.1996. The cost of the above vehicle was paid to HAE by way of DD No. 177156 dated 07.11.1996 for Rs. 3,01,955/-.

(viii) Mrs. L.R. Mithran, IRS passed the final adjudication order No. 31/COMMOR/CH/44/96 dated 05.12.1996 in the above case slicing down the evaded amount of duty from Rs. 35,79,07,804/- to Rs. 9,14,40,448/- in favour of M/s. Kitply Industries Limited, Kolkata.

(ix) After passing the aforementioned final order dated 05.12.1996, Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited and Advisor to the Board of Directors of M/s. Warren Tea Limited, directed Shri P.K. Bose, Managing Director, M/s. Warren Tea Limited, vide Note dated 20.12.1996 to purchase one demand draft for Rs. 5 lakhs in favour of Zami Memorial Charitable Trust, Shillong. Accordingly demand draft No. 483425 dated 23.12.1996 for Rs. 5 lakhs was obtained by debiting the account of Warren Tea Limited maintained with State Bank of India, Commercial Branch, Kolkata and subsequently sent to the said Trust. This demand draft of Rs. 5 lakhs was deposited on 03.01.1997 in account No. 10308 of Zami Memorial Charitable Trust, maintained with Vijaya Bank, Laitumukhran Branch, Shillong and credited in the said account on 04.01.1997.

(x) Mrs. L.R. Mithran, IRS obtained Rs. 5 lakh in the name of Zami Memorial Charitable Trust through demand draft No. 535617 dated 22.5.1997, issued by United Bank of India, G.S. Road Branch, Guwahati from dubious source, which she claimed to have received as donation, but without prior permission of or intimation to the Department.

(xi) Mrs. L.R. Mithran, IRS, has obtained employment for her son Shri A.R. Mithran and accommodated at Tura, Meghalaya from M/s. Kitply Industries Limited with whom she had official dealings during the year 1997.

(xii) The aforesaid act of Mrs. L.R. Mithran, IRS constitute departmental misconduct in contravention of Rule 3 (1), rule 4 and 18(3) of C.C.S. (Conduct) Rules, 1964.

3. The Articles of Charge framed on the basis of the above Statement of Imputation are as under:-

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## ARTICLE OF CHARGE NO.1

3.1 Whereas Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she during the year 1996-97 obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited, Kolkata with whom she had official dealings, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of C.C.S. Conduct Rules, 1964.

## ARTICLE OF CHARGE NO.2

3.2 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she accepted donation/gift by way of bank draft, including Tata Mobile vehicle bearing Registration No.ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s. Warren Tea Limited, a sister concern of M/s. Kitply Industries Limited with whom she had official dealings and thereby contravened rule 3 (4)(i) and (iii) of C.C.S. Conduct Rules, 1964.

## ARTICLE OF CHARGE NO.3

3.3 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Trust (ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority and thereby contravened rule 18 (3) and 3 (1) of C.C.S. Conduct Rules, 1964.

4. The above charges were intended to be proved through 68 documents mentioned in Annex. III of the Charge Sheet (D-1 to D-68) and 33 witnesses listed in Annex. IV thereof. The brief details of the document are as under:-

D.1 This is a Preliminary Inquiry Registration Report by the Superintendent of Police, Central Bureau of Investigation, Guwahati. Its contents are similar to that of the allegations made in the Charge Sheet.

D.2 This document is a copy of the First Information Report lodged by the Superintendent of Police, Central Bureau of Investigation, Guwahati. This document contains the allegations against the Charged Officer.

D.3 This is a copy of the Show Cause Notice issued to M/s Kitply Industries Limited and others. This document contains allegation of evasion of Central Excise duty by M/s Kitply Industries Limited and others.

D.4 This is a record of hearing of the case against M/s Kitply Industries Ltd. and others which was held on 17.9.1996. There is no dispute about the existence of this document.

D.5 This is a copy of the adjudication order passed by Mrs. L.R. Mithran in the matter of Show Cause Notice issued to M/s Kitply Industries Limited. There is no dispute about the existence of this document.

D.6 This is a copy of the application for registration of Zami Memorial Charitable Trust. There is no dispute about the existence of this document or about its contents. This document establishes that the Trust was for charitable purposes and that Mrs. L.R. Mithran was one of the members of the Governing Body of the Trust as a Trustee.

D.7 This is a Treasury challan dated 26.11.1996. It shows that Mrs. L.R. Mithran deposited Rs.250 for registration of the Zami Memorial Charitable Trust. She is one of the promoters of this Charitable Trust created for the welfare of women and children.

D.8 This is a copy of the Memorandum of Association of Zami Memorial Charitable Trust. There is no dispute about the existence of this document.

D.9 This is a copy of the Rules and Regulations of Zami Memorial Charitable Trust, 1996. There is no dispute about the existence of this document.

D.10 This document is the Certificate of Registration No.SR/ZMCT-730/96 of 1996 dated 27.11.1996 issued by the Registrar of Societies, Government of Meghalaya, Shillong to the Zami Memorial Charitable Trust. There is no dispute about the existence of this document.

D.11 This is a copy of letter of M/s Kitply Industries Limited addressed to Zami Memorial Charitable Trust asking them for a copy of Income Tax exemption certificate issued to the said Trust. There is no dispute about the existence of this document.

D.12 This is a copy of letter of M/s Kitply Industries Ltd. to M/s Himmat Singhka Auto Enterprises, Kolkata under which a cheque for Rs.3,01,955/- was sent to M/s Himmat Singhka Auto Enterprises, Kolkata. There is no dispute about it.

D.13 This document is Inter Office Memo dated 7.11.1996 of Himmat Singhka Auto Enterprises, Kolkata to Guwahati about their internal transactions. There is no dispute about this document.

D.14 This document is a copy of the draft for Rs.3,01,955/- in favour of Himmat Singhka Auto Enterprises, Kolkata. There is no dispute about this document.

D.15 This is a copy of the Bill No. TEZ/249/96-97 dated 8.11.1996 of Himmat Singhka Auto Enterprises, Kolkata for sale of Tata diesel vehicle to M/s Zami Memorial Charitable Trust, Shillong. There is no dispute about this document.

- D.16 This is a receipt issued by Himmat Singhka Auto Enterprises, Kolkata in favour of Zami Memorial Charitable Trust. There is no dispute about this document.
- D.17 This is a copy of Cheque No.77-116 dated 1.11.1996 for Rs.3,01,955/- drawn by M/s Warren Tea Limited in favour of Himmat Singhka Auto Enterprises, Kolkata. There is no dispute about this document.
- D.18 This is a copy of letter No. WTL/ACCT/S-13 dated 21.12.1996 issued by M/s Warren Tea Limited to SBT, Commercial Branch, Kolkata. There is no dispute about this document.
- D.19 This is a certified copy of ledger sheet of Account No. 215025 of M/s Warren Tea Ltd., Kolkata. There is no dispute about this document.
- D.20 This is a photostat copy of Demand Draft No.483425 dated 23.12.1996 for Rs.5,00,000/- issued by State Bank of India, Commercial Branch, Kolkata. There is no dispute about this document.
- D.21 This is a copy of letter dated 8.4.2000 of Shri R.A. Shah, the then Manager of Mahadevlal Nathmal, Kolkata to the Investigation Officer, CBI, Guwahati confirming about receipt of a letter from M/s Kitply and its forwarding to HAE, Guwahati. There is no dispute about this document.
- D.22 This document is a payment voucher No.S/1912 dated 1.11.1996 of M/s Warren Tea Ltd., Kolkata on account of a donation of Rs.3,01,955/-. There is no dispute about this document.
- D.23 This is a copy of Inter Office Memo dated 20.12.1996 of M/s Kitply Industries Limited issued under the signature of Shri S.P. Goenka in respect of donation of Rs.5 lakhs to Zami Memorial Charitable Trust. There is no dispute or doubt about this document.
- D.24 This document is a copy of letter No. WTL/ACCT/D-3 dated 20.12.1996 forwarding a demand draft of Rs.5 lakhs as donation to a Zami Memorial Charitable Trust addressed by M/s Warren Tea Limited. There is no dispute or doubt about this donation having been given to the Zami Charitable Trust.
- D.25 This is a payment voucher No.S/2337 dated 23.12.1996 issued by M/s Warren Tea Limited, Kolkata in respect of the donation referred to in D.24 above.
- D.26 This is a copy of voucher dated 23.12.1996 of State Bank of India, Commercial Branch, Kolkata issued to M/s Warren Tea Ltd. in respect of a draft of Rs.5 lakh given as donation to Zami Memorial Charitable Trust.

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D.27 This is a copy of letter No.WTL/ACCT/D.3 dated 14.8.1997 addressed to Zami Memorial Charitable Trust by M/s Warren Tea Limited in respect of donations made to them.

D.28 This document is a copy of letter No.WTL/ACCT/D-3 dated 28.12.1998 addressed by M/s Warren Tea Ltd. to Zami Memorial Charitable Trust asking for official receipt for the donation.

D.29 This is a copy of account opening form of A/C No.10308 of Zami Memorial Charitable Trust. There is no dispute about this document.

D.30 This is a copy of statement of A/C of Zami Memorial Charitable Trust maintained with Vijaya Bank, Laitumukhrah Branch, Shillong. There is no dispute about this document.

D.31 This is a copy of pay-in-slip dated 3.1.1997 related to A/c No. 10308 of Zami Memorial Charitable Trust. There is no dispute or doubt about this document.

D.32 This is a copy of letter No.V.563/6/67 dated 12.5.1998 of Shri B. Basu, Addl. Commissioner (Vig.), O/O the DG (Vig.), Customs and Central Excise, New Delhi addressed to the Superintendent of Police, CBI, Guwahati under which certain official documents and files were forwarded to CBI.

D.33 This is a copy of letter No. Nil dated 27.4.2000 of Shri S.K.Ghosh, General Manager (Finance) of M/s Warren Tea Limited, Kolkata addressed to the Investigating Officer, CBI, Anti Corruption Branch, Guwahati during investigation of the case.

D.34 It is a copy of extracts of printed accounts books of M/s Warren Tea Limited for the year 1996-97, 1997-98 and 1998-99.

D.35 This is a copy of the Search List dated 9.4.1999. There is no dispute about this document.

D.36 This document is a copy of Memo dated 15.6.1999 drawn by Inspector of CBI, Guwahati in respect of Bank Account of Zami Memorial Charitable Trust. There is no dispute about this document.

D.37 This document is a copy of letter No.SR-1/97/1106 dated 9.6.1999 addressed by the Registrar of Societies, Meghalaya, Shillong to the Superintendent of Police, CBI, Guwahati forwarding the file relating to the registration of Zami Memorial Charitable Trust. There is no dispute about the registration of the said Trust.

D.38 This is a copy of the Memo dated 5.8.1999 drawn by Inspector of CBI, Guwahati regarding demand draft issued by S.B.I., Kolkata. There is no dispute about the document in question.

D.39 This document is a copy of Memo dated 5.8.1999 drawn by Inspector, CBI, Guwahati in respect of sales of M/s Himatsinghka Auto Enterprises Guwahati.

D.40 This document is a copy of Memo dated 28.4.2000 under which various documents relating to donations to Zami Memoraial Charitable Trust by Warren Tea Limited were produced by Shri A.K.Raha.

D.41 This document is a copy of Memo dated 8.4.2000 relating to recovery of some inter-office communications of M/s Himatsinghka Auto Enterprises.

D.42 This is a copy of Production Memo dated 8.4.2000 in respect of documents relating to donations made by M/s Warren Tea Limited to Zami Memoraial Charitable Trust.

D.43 This a copy of Memo dated 7.4.2000 under which M/s Kitply Industries Limited tendered copies of some documents to C.B.I.

D.44 This is a copy of the letter No.KIT/CAL/ dated 7.4.2000 issued by M/s Kitply Industries Limited to C.B.I expressing their inability to produce copies of documents demanded by C.B.I. as they did not preserve their records beyond one year.

D.45 This is the certified copy of the Annual Return of M./s Kitply Indsuties Limkited for the year 1996-97.

D.46 This document is a copy of the letter No. GSR/CBI/1/2000 dated 16.5.2000 of United Bank of India addressed to the Inspector, CBI, Guwahati handing over the application for making the draft of Rs.1 lakh in favour of Zami Memorial Charitable Trust.

D.47 The document is a copy of DD application dated Nol for draft of Rs. 1 lakh on United Bank of India, GS Road Branch, Guwahati.

D.48 This document is a copy of producton memo dated 25.4.2000 in respect of draft of Rs. 1 lakh in favour dof Zami Memorial Charitable Trust. As already mentioned above, there is no dispute or doubt about this doncation having been given to the said Trust.

D.49 This is a copy of Memo dated 25.5.2000 drawn by Inspector, CBI/ACB, Guwahati regarding recovery of certified copy of letter No. KIT/CA/96 dated 1.11.1996 from M/s Kitply Industries Limited.

D.50 This is a copy of letter No. SHI/Misc./CBI/DD/1/2000 dated 15.5.2000 addressed by United Bank of India to the Inspect of CBI/ACB, Guwahati regarding the demand draft for Rs. 1 lakh in favour of Zami Memorial Charitable Trust. There is no dispute or doubt about the said draft having been received by the said Trust as donation.

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D.51 This is a copy of Sales Certificate dated 11.11.1996 of Himatsinghka Auto Enterprises, Tezpur (Assam) in respect of the Tata Diesel vehicle delivered to Zami Memorial Charitable Trust.

D.52 This document is a copy of Bill No. TEZ/249/96-97 dated 8.11.1996 of Himatsinghka Auto Enterprises N.T. Road Tezpur, Assam again in respect of Tata Diesel Vehicle delivered to Zami Memorial Charitable Trust.

D.53 This document is a copy of registration certificate of vehicle No. ML-05b-2648 owned by Zami Memorial Charitable Trust.

D.54 This document is a photostat copy of Money Account dated 1.12.1998 under the signature of Mrs. L.R. Mithran under which she gave an account of Rs. 17,106.85 to the Treasurer of the Zami Memorial charitable Trust in respect of the amounts spent for the purpose of the Trust.

D.55 This document is a copy of Income Tax Assessment Order dated 14.3.2000 in respect of M/s Warren Tea Limited.

D.56 This document is a copy of letter No. KIT/CAL/APPL/97-98 dated 25.7.1997 addressed by M/s Kitply Industries Limited to Mr. Allan R. Mithran.

D.57 This is a copy of deposit slip of Vijaya Bank dated 26.5.1997 in respect of Zami Memorial Charitable Trust.

D.58 This document is a certified copy of fax addressed by M/s Kitply Industries Limited to M/s Warren Tea Limited, Kolkata.

D.59 This document is a copy of Inter Office Memo dated 6.11.1996 of Himatsinghka Auto Enterprises, Guwahati to their Amingaon office showing receipt of payment in respect of the vehicle supplied to Zami Memorial Charitable Trust.

D.60 This is a copy of authority slip dated 6.11.1996 of M/s Kitply Industries Limited to Zami Memorial Charitable Trust, Shillong.

D.61 This document is a copy of letter No. WRL/ACCT/D-3 dated 12.4.2000 addressed by M/s Warren Tea Limited to M/s Kitply Industries Limited regarding donations to Zami Memorial Charitable Trust.

D.62 This document is a copy of Memo dated 24.8.2000 drawn by the Inspector of CBI/ACB, Guwahati regarding recovery of some house rent and electricity receipts.

D.63 This document is extract of House Rent Account Register showing letting out of premises at Tura.

D.64 This document is a copy of letter dated 6.9.1997 addressed to S.D.O., Electircal, Tura by Mr. Khirode Mark in respect of presmises stated to have rented out by Mr. A.R. Mithran.

D.65 This is a copy of printed receipt No. 171872 dated 25.5.1998 issued by Meghalaya State Electricity Board, Tura.

D.66 This document is a copy of electricity bill dated 15.5.1998 issued to Mr. A.R. Mithran.

D.67 This document is a Memo dated 14.6.2000 showing recovery of a copy of Income Tax Assessment of Warren Tea Limited for 1978-79 and a copy of letter written by M/s Kitply Industries Limited to M/s Warren Tea Limited.

D.68 This document is a copy of discreet Inquiry Report dated 8.12.1997 of Shri N.Kar, Assistant Commissioner (Vig.)

5. Shri S.V.Singh was appointed to be the Presenting Officer by the Disciplinary Authority while the Charged Officer nominated Dr. D.D.Rishi as her Defence Assistant.

### HEARINGS

6. At the start of first hearing on 25<sup>th</sup> May, 2002, the charges contained under Memorandum dated 13.12.2001 forwarded under F.No.C-14011/39/2001-Ad.V dated 11.04.2002 were read over to Smt. L.R. Mithran and she was requested to indicate whether she admits any or all the charges contained in Annexure-I to the said Memorandum. It was submitted on behalf of Smt. L.R. Mithran that the charges contained in the Memorandum referred to above were false and fabricated and therefore were denied by her. On denial of the charges on behalf of Smt. L.R. Mithran, it was decided to proceed further with the inquiry.

7. Shri S.V. Singh, P.O. and Dr. D.D. Rishi, Defence Assistant, were then requested to go through the list of the documents and the list of the witnesses as contained in Annexure III and Annexure IV of the said Memorandum and to indicate as to whether it is necessary to go through the entire exercise of examining all the prosecution witnesses with reference to the documents listed in Annexure III and statement listed in Annexure IV. At the outset, Dr. D.D. Rishi drew attention to the contents of Chapter 11 of Swamy's Compilation of CCS (CCA) Rules, which outlines the procedure for conducting inquiry and submitted that the documents as listed in Annexure III of the said Memorandum have to be produced in original and are required to be brought on record as prosecution documents for further proceedings in the inquiry. Dr. D.D. Rishi drew particular attention to the para 2 of Chapter 11 of the said Compilation which specifically provides that the document appended to the Charge Sheet are to be made available by the Disciplinary Authority to the Presenting Officer, who will be the custodian thereof. It is further provided that the documents may be taken on record on the date of preliminary hearing itself or in the course of hearing as may be found convenient. It is also provided that once the listed documents are brought on record, they are to be assigned exhibit numbers in the continuous series such as S-I, S-II. The instructions further provided that once the documents are brought on record and are marked in the above manner, they should not be passed on to the Presenting officer for custody.

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8. On this preliminary objection raised on behalf of Smt. L.R. Mithran, the Presenting Officer Shri S.V. Singh was requested to indicate if the documents in original as listed in the said Memorandum were available with him. He pointed out that the documents in original are available with CBI. Shri S.V. Singh pointed out that the CBI had addressed the communication to Smt. L.R. Mithran stating that inspection of the original relied-upon documents can be taken up in the office of DSP (CBI), Shillong on any working day with advance intimation to DSP. It was agreed by Dr. D.D. Rishi that such communication No.3/2(A)-99-SHG/2946 dated 14.5.2002 had been received from CBI and copy of this communication may be taken on record. Shri S.V. Singh, P.O. submitted that in view of this communication from CBI, attested photo copies of the relied-upon documents as contained in Annexure III to the said Memorandum may be taken on record and marked as exhibits. On this suggestion, Dr. D.D. Rishi pointed out that attested photo copies as such could not form the basis of conducting inquiry. First, the documents in original had to be made available to the Inquiring Authority and then it is prerogative of the Inquiring Authority to allow the inspection of original relied-upon documents to the Charged Officer. Dr. Rishi stated that no doubt the CBI had addressed the communication to the Charged Officer to take inspection of the documents. However, he alleges that the communication to inspect the documents was meant to terrorise the Charged Officer. Dr. D.D. Rishi also pointed out that the letter dated 14.05.2002 received from CBI does not disclose the reasons why the documents in original were not made available to the Inquiring Authority. On this objection of the Defence Assistant, Shri S.V. Singh produced the letter No.3/2(A)/99-SHG/2525 dated 24.04.2002 written by the Superintendent of Police, CBI ACB, Guwahati intimating that since the original documents were required to be exhibited in the Court during the trial, the attested photo copies of the relied-upon documents and statement of witnesses were being sent therewith. A copy of this letter was taken on record and copy of this letter was also made available to the Charged Officer. It was ordered that inspection of the documents in original may be taken by or on behalf of the Charged officer by contacting DSP, Shillong as intimated by CBI and during the inspection and it may be satisfied that the attested photo copies as supplied by the CBI are genuine. Dr. D.D. Rishi, Defence Assistant was also requested to complete this inspection. It was further ordered that the next hearings would be held in Kolkata, Shillong and Guwahati from 24.06.2002 to 28.06.2002.

9. The next hearing of the case was held on 21<sup>st</sup> June.2002 at Guwahati. At the start of the inquiry, attention was drawn to Ministry's letter F.No.C-14011/39/2001-Ad.V dated 29.05.2002 addressed to Shri S.V. Singh, Presenting Officer clarifying that the Charged Officer will be given an opportunity to inspect the documents before the commencement of the regular hearings in presence of the Inquiring Officer or the Presenting Officer or any other officer deputed for the proceedings. The Defence Assistant, Dr. D.D. Rishi pointed out that the Inquiry Officer had afforded the opportunity to the Charged Officer. He also stated that he has no objection to the inquiry being conducted further. He also requested that an extension of time may be given for inspection of documents, which were available with the CBI at Shillong. He also pointed out that 10 days advance notice was to be given to the Presenting Officer and the inspection was likely to take some time. He, however, stated that he had no objection for proceeding further with the inquiry.

9. Summons had been issued to ten witnesses to attend the proceedings at Guwahati on 21.06.2002. A communication had been received from Shri Subroto Kumar Kanungo,

Witness No.29 intimating that he had to go for his daughter's treatment and therefore, he would not be able to attend the inquiry at Guwahati.

10. The following witnesses were present on the 21.6.2002 at Guwahati:-

- i. Shri P.C. Bordoloi, Assistant Manager, SBI (Roha Branch).
- ii. Shri A.K. Raha, Lachit Nagar, Guwahati-7.
- iii. Shri D.K. Thakuria, Manager, M/s. Kitply Ltd., Guwahati.
- iv. Shri S.K. Roy, M/s. Himatsingka Auto, Chatribari, Guwahati.
- v. Shri K.R. Kabui, S.I., O/o the S.P., CBI, ACB, Guwahat.
- vi. Shri Manoj Banerjee, S.I., CBI, ACB, Guwahati.
- vii. Shri Paresh Chandra Sharmah, UBI, G.S. Road, Guwahati.
- viii. Shri O.P. Prajapati, M/s. Kitply Ltd., Guwahati.
- ix. Shri R.P. Bose, Dy. SP, CBI, Kolkata.

11. All the above witnesses, except Shri R.P. Bose, were examined by the Presenting Officer and cross-examined by the Defence Assistant. It was decided to take up examination and cross-examination of Shri R.P. Bose at Kolkata on 25.06.2002.

12. The next hearing was held at Shillong on 22.6.2002 when the following witnesses had been called to tender evidence:

- i. Shri Sukanta Das, Superintendent, Central Excise,
- ii. Shri Mohit Kumar Chakraborty, Head Assistant District Transport Office
- iii. Shri Ricky G. Momin of Tura
- iv. Mrs.L. Kharkongar, Registrar of Societies, Meghalaya
- v. Shri P. Ramakrishnarao, Manager, Vijaya Bank, Shillong
- vi. Shri B.K. Sharma, Assistant General Manger, State Bank of India. Shillong.
- vii. Smt. Lalchangliani Sailow, Inspector, Central Excise
- viii. Shri Debashis Ghosh from Telecommunication Department, Shillong.

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13. Out of the above witnesses, Shri Mohit Kumar Chakraborty came and handed over a letter stating that he was not aware as to in what connection he was being summoned. Shri Debashis Ghosh of Telecommunication Department appeared in respect to the summons but the Presenting Officer decided not to examine him as a departmental witness. Smt. L. Kharkongar did not present herself at the time of inquiry. S/Shri Sukanta Das, Ricky G. Momin and Smt. Lalchangliani Sailow appeared and were examined by the Presenting Officer and cross-examined by the Defence Assistant. The remaining witnesses did not come.

14. The next hearing was held at Kolkatta on 24<sup>th</sup> June 2002. The following witnesses had been summoned to appear before the Inquiring Authority:-

- i. Shri Sanjay Sen, Manager Accts., M/s. Warren Tea Ltd.
- ii. Shri Bidhu Bhusan Khatua
- iii. Shri Haridasan Nair of M/s. Kitply Industries Ltd.
- iv. Shri Subojit Kr. Ghosh, General Manager, M/s. Warren Tea Ltd.
- v. Shri Anil Kr. Banka, Director, M/s. Kitply Industries Limited
- vi. Shri Prabhat Kr. Ghosh, Managing Director, M/s. Warren Tea Ltd.
- vii. Shri Shambunath Jajoria, Director of M/s. Kitply Industries Ltd.
- viii. Shri Ram Avtar Saha
- ix. Shri Sunil Kr. Biswas, Chief Manager of SBI , Kolkata.

15. Out of the above witnesses, Shri Ram Avtar Singh did not appear and addressed a letter informing that he would be out of town. Shri Sunil Kr. Biswas also did not appear. The Presenting Officer took up examination of the witnesses with reference to their statements made available by the CBI. At this point, the Defence Assistant, Dr. D.D. Rishi stated that the statements recorded by CBI were not cited as relied-upon documents and could not be introduced as evidence at this point of time. The Presenting Officer explained that these statements are nothing but the testimony of recovery or surrendering of certain documents, available with or under the control of the witnesses. The statements per se do not contain any evidence in respect of the charges and they mostly contain personal details of the witnesses. The Defence Assistant, Dr. D.D. Rishi, however persisted with his objection and wanted his objection to be placed on record. However, the explanation given by the Presenting Officer about the contents of statements made available by CBI was accepted and Defence Assistant was assured that except for the presentation or the recovery of the documents, these evidence are themselves, not relied-upon documents in the inquiry. The statements have no other evidentiary value and to that extent, the Charged Officer's rights of a fair inquiry would not be compromised by a reference to these statements while getting the relied-upon documents, recovered from these witnesses, verified from them. Following witnesses were examined by the Presenting officer and cross-examined by the Defence Assistant:-

- i. Shri Sanjay Sen
- ii. Shri Bidhu Bhusan Khatua
- iii. Shri Subojit Kr. Ghosh
- iv. Shri Haridasan Nair
- v. Shri Anil Kr. Banka
- vi. Shri Prabhat Kr. Bose
- vii. Shri Shambunath Jadojia

16. Next hearing of the case on 25<sup>th</sup> June, 2002 was also at Kolkatta. The following witnesses had been summoned to appear before the Inquiring Officer:-

- i. Shri R.P. Bose, Dy.SP., CBI
- ii. Shri Partha Roy Chowdhury, Manager, State Bank of India
- iii. Shri Nirupam Kar, Assistant Commissioner (Vig.)
- iv. Shri A.K. Das, the then Deputy Director of Anti-Evasion
- v. Shri Ram Avtar Saha
- vi. Shri Pawan Kr. Goenka, Managing Director of M/s. Kitply Industries Limited

17. During the said hearing on 25.6.2002, Shri Partha Roy Chowdhury did not turn up for inquiry, Shri Pawan Kr. Goenka and Shri Ram Avtar Saha presented but both of these witnesses were chosen not to be examined by the Presenting Officer. Following witnesses were examined and cross-examined: Shri A.K. Das, Shri R.P. Bose, and Shri Nirupam Kar.

18. The next hearing of the case was held on 10<sup>th</sup> August, 2002 at New Delhi as the Charged Officer wanted to produce defence witnesses. At the outset, a copy of letter C.No.II/Addl.Commr./Conf/CF/Kol-IV/2002 dated 01.08.2002 received from Shri S.V. Singh, Presenting Officer was made available to Dr. D.D. Rishi. In the said letter, Shri S.V. Singh had pointed out that under Rule 14 (11) of CCS (CCA) Rules, the Defence

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Assistant/Charged officer is required to give the list of witnesses and evidence at the beginning of the inquiry. Dr. Rishi pointed out that provisions of Rule 14 (11) are not relevant as they refer to a situation where the government servant fails to appear within the specified time or refuses or omits to plead. He also pointed out that here the Presenting Officer has adduced all evidence in support of the charges and has already closed the case. Thereafter, it is the right of the defence to produce its own evidence and witnesses in terms of Rule 14 (17). He, therefore, pleaded that the objection raised by the Presenting officer was not sustainable. On consideration of this aspect, it was decided to go ahead with the production of evidence and examination and cross-examination of the witnesses in terms of rule 14 (17) of the CCS (CCA) Rules.

19. At the beginning of the hearing on 10<sup>th</sup> August, 2002, Dr. D.D. Rishi, Defence Assistant submitted affidavits sworn before the Judicial Magistrate First Class by the following persons:-

- i. Mr.A.R. Mithran
- ii. Mr. H.S. Kumbht
- iii. Mrs. L.T. Zauvi
- iv. Mrs. Hlimpuui
- v. Mrs. Laldawni
- vi. Mrs. Lalniehchawngi
- vii. Mrs. Dartahniengi
- viii. Mrs. Biaksangi
- ix. Mrs. Esther Lianchhawni
- x. Mrs. L.T. Muani
- xi. Mrs.L. Chungnungi
- xii. Mrs. Lalremawii
- xiii. Mrs. Lilypuui
- xiv. Mrs. Rose Mary Lalmangaihizuali
- xv. Mrs. Vanlalruati

20. Copies of these affidavits were made available to the Presenting Officer, Shri S.V. Singh. During the course of hearing, following additional documents were produced by the Defence Assistant:-

- a) Order No.A-616-61D/Cal/99 dated 15.6.1999 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata in Appeals E/V-137, 138/97.
- b) Copy of the order passed by the Hon'ble Supreme Court in Civil Appeal no.D-17640/99 dated 12.01.2000.

21. Following witnesses were examined and cross-examined during the hearing on 10.8.2002:-

- i. Mr.A.R. Mithran, Mercy Dez, Nongrim Hills, Shillong
- ii. Mr. T. Haokip, Addl. Commr., Central Excise, Shillong
- iii. Mr. H.S. Kumbhat, Statutory Auditor, ZMCT, Shillong
- iv. Mrs. L.T. Zauvi, Lau-o-Sib, Madanriting, Shillong
- v. Mrs. L. Chungnungi, Madanriting, Shillong
- vi. Mrs. Laldawni, Madanriting, Shillong
- vii. Mrs. Lalniahchwngi, Madanriting, Shillong
- viii. Mrs. Darthahniengi, Happy Valley, Shillong
- ix. Mrs. L.T. Muani, Lau-o-Sib, Madanriting, Shillong
- x. Mrs. L.R. Mithran, Mercy Dez, Nongrim Hills, Shillong
- xi. Mrs. Lalremawii, Madanriting, Shillong.

22. During this hearing, the Charged Officer, Smt. L.R. Mithran offered herself to be examined on her own behalf in terms of Rule 14 (17) of CCS (CCA) Rules, Dr. D.D. Rishi, Defence Assistant examined her. Shri S.V. Singh, Presenting Officer did not choose to cross-examine her. It was decided that any additional points or briefs, if any, will be submitted by 19th August, 2002.

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23. The Presenting Officer Shri S.V. Singh filed his written brief dated 18.7.2002 vide C.No.2/Addl. Commr/Con/CE/Kol-IV/2002 dated 22.7.2002. The submissions made in response to it have been taken on record. The Charged Officer has decided not to file a rejoinder. The Defence Assistant has informed that all the points in additional brief have already been covered by him.

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WRITTEN BRIEF BY SHRI S. V. SINGH, PRESENTING OFFICER

Shri S.V. Singh, the Presenting Officer submitted a written brief dated 13.7.2002 containing arguments in support of the charges which are as under :

(i) Under his letter no. 3/2(A)/99 – SHG 2525 dated 24.04.2002 Superintendent of Police, CBI, ACB, Guwahati forwarded, to him the attested photo copies of relied upon documents and statements of witnesses for the purpose of departmental inquiry. Under the said letter it was also mentioned that the original documents are required to be exhibited in the court during trial. Photocopies of the documents were supplied to the charged officer vide F.No. 2 /Addl.Commissioner/COM/CE/KOL-IV/2002dt.2.5.2002. Also the charged officer was requested to take inspection of the documents in the office of the SP, CBI, Guwahati vide above letter. At the time of preliminary hearing on 25.5.2002 at Delhi it was argued by the Defence Assistant on behalf of the charged officer that the I.A. should have in his possession the original documents. The actual position of the documents was explained by him that since simultaneous prosecution, proceeding are also continued in the court of law and the original documents are to be exhibited in the court, photocopies (attested) by the CBI should be accepted for the purpose of departmental proceedings. It was also submitted by him that the C.O. has been given liberty to take inspection of the documents relied upon in the memorandum.

(ii) A case of duty evasion by M/s. Kitply Industries was detected by the officers of Director General, Anti-Evasion, Calcutta in 1994 and the same was forwarded to the Shillong Commissionerate as the factory premises of the said firm falls within the jurisdiction of Shillong. The notice to Show cause No.Ch.44/6/Adjn/95/77278-84(3) dated 28.2.95 – (Document No.3) was issued for evasion of duty of Rs.35,79,07,804.00. Mrs. L.R. Mithran, Commissioner heard the case on 17.9.96 in her office at Shillong. During the hearing Shri S.P.Goenka, Chairman of M/s.Kitply Industries along with an advocate attended the Personal Hearing on behalf of the company, (Document No.4). However the statement of Shri Shambhunath Jajodia (PW-4) shows that during personal hearing besides Shri S.P. Goenka and an advocate Shri Shambhunath Jajodia, Shri Haridasan Nair of the company were also present. The final adjudication order was issued on 05.12.96 vide order no.32/Commissioner/Ch-44/CE/96 dated 05.12.96 (D-5). The adjudication order sliced down the central excise duty to Rs.8,13,40,448.00 to be paid by the said firm thereby causing a loss of Rs.27,65,67,356.00 to the Govt.

(iii) In between the hearing of the case of M/s Kitply Industries Ltd. in 17.9.96, and passing of order on 05.12.1996 Mrs.L.R. Mithran, Commissioner, floated a trust, viz, "Zami Memorial Charitable Trust" in the name of her late mother. The said trust received donations in cash besides a Tata Mobile Vehicle registration no.ML-05-B-2468 from one M/s. Warren Tea Ltd. an associate firm of M/s. Kitply Industries Ltd., Calcutta. The

sequence of events and documents/statements discussed below will reveal that passing of adjudication order and formation of the Trust had a close nexus. The Trust had been formed to receive benefits from the firm indirectly through the associate firm of M/s. Kitply for the favour shown during the adjudication. The benefits received through M/s. Warren Tea Ltd., an associate of M/s. Kitply Industries Ltd. is nothing but an attempt to conceal actual fact.

(iv) Documents discussed below will reveal that Mrs. L.R. Mithran, IRS, was solely involved in formation of the Trust in the name of her mother and was always in total control of the trust. Challan No.1643 indicates that Mrs. L.R. Mithran herself had tendered the challan form for promotion of the trust and submitted Rs.250/- as registration fee with the Registrar of Societies, Meghalaya on 26.11.96 for registration of the trust during the time of adjudication (D-7). The Registration Certificate had been issued on 28.11.96 in the name of her late mother "Zimi Memorial Charitable Trust (D-10). Challan filled up on 26.11.96 and registration certificate received on 28.11.96 also shows that registration was made under hurried persuasion with intention to receive the benefits urgently. The provisions of the Memorandum of Association (D-8) and the rules and regulation (D-9) of the Trust shows the permanent family ownership over the trust and all powers have ultimately concentrated with Mrs. L.R.Mithran with a sole motive to utilise the trust for the benefit for herself and for the members of her family. The first and foremost condition in the Memorandum of association under Chapter VIII is that "All the direct descendants of P.L.Zami (the late mother of Mrs.L.R.Mithran, Commissioner) shall be trustees and her husband P.U.K.T.Khuma shall be the chief patron. These shall be for life. On the demise of the said patron the trustees shall nominate one of the trustees as Chief Patron".

(v) The governing body have been entrusted with the powers of all decisions on issues relating to the society, but in case of dispute, indecision or difference of opinion, the trustees and the Chief Patron shall have the veto power (Chapter-IX of the Memorandum of Association). It means, Trustees and the Patrons are enjoying absolute authority over the governing body. The governing body comprise (1) President (2) Vice-President, (3) General Secretary (4) Treasurer (5) Finance Secretary (6) Asstt. General Secretary (7) Three senior advisor (8) ten executive members (9) Chief Patron and (10) seven trustees. (Chapter-X of the Memorandum of Association). Section 26 of the Rule and Regulation states that "The governing body shall be appointed by the representative Trustee once in 2(two) years."

(vi) There are all together seven trustees besides chief patron and patrons are represented by Mrs. L.R.Mithran alias P.L.Lalpari (Chapter-X of the Memorandum of Association). Rule 34 provides that "Trustees may ask any office bearer to relinquish charge/post for any of the reasons in 14 and 15 subject to the provisions of 16". Rule-37 provides that "All projects, schemes, receipts, and expenditures shall require the approval of the governing body in general and the trustee in specific". Rule 49 provides that : Any proposal for amendment of the Rules shall be in writing for consideration by the governing body and approval by the Trustee". Rule-50 provides that "All appeal against action under 14 and 15 lie with a committee consisting of Chief patron, representative Trust and any 2(two) other trustee". Rule-53 provides that "The trust may be dissolved by a resolution passed by 50%of the governing body and approval by the representative trustee and chief patron. However, the proposal may be known to the general body. Rule-54 provides "upon dissolution of the Trust all properties, movable and immovable of whatever description and after the

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satisfaction of all debts and liabilities shall be transferred to the some other charitable organization having similar aims and objectives". Rule-55 provides that "The representative trustee and the chief patron shall decide the name, address and particulars of such charitable organization as mentioned in 54 above".

(vii) From the above citation of the Rules and Regulations of the trust it appeared that though governing body had been exhibited sole authority of the trust but in practice the trustees are all in all of the Trust. Trustees are for life. Trustees appoint the governing body. Trustees can dismiss an office bearer. For implementing any decision, for receipt and payment of any amount trustees' approval is necessary. No arrangement of Rules can be carried out without the approval of trustees. No appeals lie against the decision of trustees. In case of dissolution trustee would decide about the fate of the property of the trust. And Mrs. P.L.Lalpari alias Mrs.L.R.Mithran is the representative of all the trustees. All powers originate from her and end with her. In other words, it can be said that the Trust is of Mrs L.R. Mithran, the Charged Officer.

(viii) The personal hearing of the case of demand on M/s.Kitply Industries Ltd., Calcutta, was held on 17.9.96 in the office of Mrs.L.R.Mithran, Commissioner at Shillong. Shri S.P.Goenka, Chairman of M/s.Kitply Industries Ltd., Calcutta, among others were present during the said personal hearing as depicted from the record of personal hearing (D-4) and also from the statement of Shri Shambhunath Jagodia, Director, M/s.Kitply Industries, Calcutta (PW-14). Final adjudication order was issued on 5.12.96 (D-5) by Mrs.L.R.Mithran, Commissioner slicing the original demand of Rs.35,79,07,804.00 to Rs.8,13,40,448.00 thereby causing loss to the Govt. to the tune of Rs.27,65,67,356.00 obtaining valuable things from the M/s.Kitply Industries Ltd., Calcutta. The benefits flowed from different routes, adopting different Modus Operandi but the benefit was actually given by M/s.Kitply Industries Ltd., Calcutta whose case was adjudicated by Mrs.L.R.Mithran, Commissioner. The indirect route was used for receiving the benefit only to suppress the dealings between Mrs.L.R.Mithran, Commissioner and M/s.Kitply Industries Ltd., Calcutta. Shri S.P.Goenka, Chairman of M/s.Kitply Industries Ltd., Calcutta was the key person behind this deal with Mrs.L.R.Mithran, Commissioner. All the activities originated from Shri S.P.Goenka of M/s.Kitply Industries Ltd., Calcutta, soon after Mrs. L.R.Mithran, Commissioner initiated hearing their case personally on 17.9.96 and Shri S.P.Goenka, Chairman of the said firm appeared before her for personal hearing on behalf of M/s.Kitply Industries Ltd., Calcutta, among others. There was an arrangement in between Shri S.P.Goenka, Chairman of M/s.Kitply Industries Ltd., Calcutta and Mrs.L.R.Mithran, Commissioner for extracting benefit out of the favour to be shown by slicing the demand to an abnormally low amount and deceive the Govt. In this dealings the services of M/s Warren Tea Ltd. had been utilised and M/s WarrenTea Ltd acted on the advice of M/s.Kitply Industries Ltd. To understand the reasons for involvement of M/s Warren Tea Ltd. in the deals actively on the advice of Shri S.P.Goenka, Chairman of M/s Kitply Industries Ltd., Calcutta, their official and personal relation need to be examined.

(ix) Shri S.P.Goenka beside being the Chairman of M/s.Kitply Industries Ltd. was also an advisor to the Board of Directors of M/s.Warren Tea Ltd. Shri P.K.Goenka the son of Shri S.P.Goenka was the Managing Director of M/s.Kitply Industries Ltd. and was also the President and Managing Director of the Warren Tea Co. (PW-27 – D34). It is observed from

the above that Shri S.P.Goenka of M/s Kitply Industries Ltd. and M/s.Warren Tea Co. had official as well as family relation. Otherwise it can be said that the two firms are of the family business of Shri S.P.Goenka. Shri S.P.Goenka utilising his family position as well as official position was very much able to serve the cause of M/s Kitply Industries Ltd. out of the sacrifice from M/s Warren tea Company. The following activities of Shri S.P. Goenka would show in detail, how he had engaged persons in accomplishment of his mission to obtain favour from Mrs. L.R. Mitran, Commissioner. On 1.11.96 Shri S.P. Goenka, Chairman of M/s Kitply Industries Ltd. asked in a letter to Shri P.K.Bose of M/s.Warren Tea Ltd. to purchase one DD on State Bank of India payable to M/s. Himat Singhka Auto Enterprises, Gauhati, for Rs.3,01,502.00 and send the DD to him – (D-3). On 1.11.96 itself payment Voucher issued from M/s.Warren Ltd. for donation for Rs.3,01,955.00 in favour of M/s.Himatsingka Auto Enterprise cheque no.770116.( D-7). On 1.11.96 itself Cheque no.770116 dated 1.11.96 of S.B.I. Commercial Branch, Calcutta issued by M/s.Warren Tea Ltd. dt. 1.11.96 in favour of M/s.Himatsingka Auto Enterprise, Calcutta for Rs.3,01,955.00 (D-17). On 1.11.96 itself letter written by M/s.Kitply Industries Ltd., Calcutta to M/s. Himat Singhka Auto Enterprise C/o. Madhabdeo Nath Mal, 40B, Princep Street, Calcutta-1, contents of the letter are:-

“For kind attention : Mr. Rajesh Shah. With reference to the telephonic discussion of our Mr. Thakuria had with your S.K.Roy, Guwahati office, we are sending herewith one cheque no.770116 dt. 1.11.96 for Rs.3,01,955.00 drawn on State Bank of India issued by M/sWarren Tea Ltd. in your favour. Kindly arrange to encash this cheque and inform your Gauhati office immediately so that they may release delivery order of the car. PS. - The vehicle value is Rs.3,01,502.00 cheque issued for Rs.3,01,955.00. Please arrange to refund the excess amount of Rs.453.00 at your end.” (D-12).

(x) Letter dated 8.4.2000 of Mr. R.A.Shah, Manager, Mahdeorao Nath Mal, Transport Contactor and Commission Agent addressed to Mr. Manoj Banerjee, Investigation Officer, CBI, ACB, Gauhati reads “This is confirm you that the original letter no.Kit/Cal/96 dated 1.11.96 received from M/s.Kitply Industries Ltd. was sent to M/s. Himatsingka Auto Enterprise, Gauhati. The remark on the letter is written by the undersigned”. (D-21) Inter office Memo dated 7.11.96 issued by M/s.Himatsingka Auto Enterprise, Calcutta to their Gauhati office written by Shri R.A.Shah reads:

“As informed you vide our Fax dated 2.11.96 we have received a cheque no.770116 dt.1.11.96 for Rs.3,01,955.00 on S.B.I. Commercial Branch, Calcutta from M/s.Kitply Industries Ltd. vide their letter No.Kit/Cal/96 dated 1.11.96 which is enclosed herewith. The above cheque was deposited in your bank account with S.B.I. Princep Street Branch on 4.11.96. To-day we have issued cheque no.070889 for Rs.3,02,408.00 (for DD on Gauhati for Rs.3,01,955.00 and DD Cheque Rs.453.00 ) and obtained a Bank Draft No.177156 of date for Rs.3,01,955.00 in your favour on SBI, Gauhati which is enclosed herewith” (D-13). The Draft No.177156 is dated 7.11.96 as stated above.(D-14). Bill dated 8.11.96 for Rs.3,01,955.00 was raised by M/s.Himatsinka Auto Enterprise, N.T.Road, Tejpur, Assam sold to P.L.Zami Memorial Trust, Shillong Meghalaya – for cost of one New Tata Diesel Vehicle Model No.207/28 grew CAB GBS 16 Engine No.483 DL41HTQ 797201 (D-15). Receipt dated 9.11.96 of Rs.3,01,955.00 was issued by M/s.Himat Singhka Auto Enterprises, Gauhati in favour of M/s.Warren Tea Co. a/c. P.L.Zami Memorial Trust,

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Shillong. (D-3). Sale certificate dated 11.11.96 was issued by M/s.Himatsingka Auto Enterprises, Assam in favour of P.L.Zami Memorial Trust on 8.11.96 (D-51).

The relevant extracts of letter dated 27.4.2000 of Shri S.K.Ghosal, General Manager Finance of M/s.Warren Tea Ltd., Calcutta, addressed to the Investigation Officer, CBI, Anti-Corruption Branch, Sunderpur, R.G.Barua Road, Dispur, Guwahati-781005 are:-

"I, Mr.S.P.Goenka, the chairman of M/s.Kitply Industries Ltd. used to be associated with our company as its Board Advisor. On the basis of his requirements a cheque for R.3,01,955.00 was made out by our company favouring M/s.Himatsinka Auto Enterprise account Zami Memorial Charitable Trust, Shillong for purchase of a new Tata Diesel Vehicle Model No.207/28 CREWCAB CLB GBS 16 being chassis no.374006 H.T.Q.9 31101, Engine No.483 DL 41 HTQ7 97201 as would be apparent from the enclosed original documents." - (D-33).

The relevant extracts of statement dated 16.6.2000 of O.P.Prajapati, Accountant, M/s.Kitply Industries Ltd., Gauhati - (PW-26) are:-

"To-day I was shown slip pad of Kitply and confirm that the writing appearing as P.L.Zami Memorial Charitable Trust was written by me for preparation of Gate Pass / delivery order from Himatsinka Auto Enterprise relating to delivery of vehicle on behalf of above trust. I also state that after taking the above said inter office memo either I have given to the representative of Zami Memorial Charitable Trust or given to Shri D.K.Jhakaria, local Manager of our company at our office."(PW-26). The vehicle was registered in the name of the Trust on 13.1.97."

(xi) From the above documents and statements it is proved that a Tata Diesel Vehicle Model No.207/28 CREW CAB CLB GBS16 was purchased by M/s.Warren Tea Ltd.,Calcutta at the instance of Shri S.P.Goenka, Chairman, Kitply Industries Ltd., Calcutta for donation to M/s.P.L.Zami Memorial Charitable Trust in between the period of personal hearing of the adjudication of M/s.Kitply Industries Ltd., Calcutta's Case on 17.9.96 and the adjudication order of the case on 5.12.96. There was no other reason for giving such donation to a charitable trust where Mrs. L.R.Mithran, Commissioner was all in all and when the officer was hearing to decide their 37 crores case.

(xii) Secondly, the date of donation is also very much relevant. On 1.11.96 Shri S.P.Goenka, Chairman of Kitply Industries Ltd. asked M/s.Warren Tea Ltd. to purchase a Demand Draft in favour of Himatsinka Auto Enterprise, a Tata vehicle dealer for purchasing a vehicle to be donated to the P.L.Zami Memorial Charitable Trust where Mrs. L.R.Mithran, Commissioner is a representative of the trust. On 11.11.96 finally sale certificate was issued by M/s.Himatsinka Auto Enterprise in favour of M/s.P.L.Zami Memorial Charitable Trust when the said charitable trust did not come into existence. The charitable trust was constituted on 22.11.96 (D Nos 8 & 9) and challan of the registration was submitted on 26.11.96 and Registration certificate was received on 28.11.96 (D- 7 & 10). Certainly Shri S.P.Goenka, Chairman of Kitply Industries Ltd., came to know that there is going to be formed a trust by Mrs.L.R.Mithran, the Commissioner, Shillong and he had to donate a vehicle to the trust. It is clearly a pre-planned strategy between Mrs.L.R.Mithran, Commissioner, Shillong and Shri S.P.Goenka, Chairman, Kitply Industries Ltd. to receive the benefit in exchange of a favour to be shown during adjudication of the case of M/s.Kitply Industries Ltd. This was possible unless Smt. L.R. Mitran confided in Shri goenka of her plan and an indication to Shri Goenka to donate in form of cash and kind to the concerned trust.

(xiii) The following documents would also prove that M/s. Kitply Industries Ltd. had also donated an amount of Rs. 5,00,000.00 to P.L. Zami Memorial Charitable Trust, Shillong besides donation of vehicle by adopting same method after their case had been adjudicated on 5.12.96. Shri S.P. Goenka, Chairman, Kitply Industries Ltd, had asked Shri P.K. Bose of M/s. Warren Tea Ltd, Co. to purchase one demand draft for Rs. 5 lakhs in favour of M/s. Zami Memorial Trust, Shillong on 20.12.96 and send the draft to him on 21.12.02 (D - 23). M/s. Warren Tea Ltd, requested the SBI, Commercial Branch 24, Park Street, Calcutta - 700 016 on 21.12.96 to issue a DD for Rs. 5,00,000/- and debit the amount together with Bank charge to their cash credit A/c. no. 21 50 25 (D - 18). A demand draft had been issued on 23.12.96 in favour of SBI, Shillong No. 483425 in the name of Zami Memorial Charitable Trust for Rs. 5,00,000/- by the Bank (D-20) and the amount was debited from their ledger together with bank charge (D - 19). The said amount of the draft of Rs. 5,00,000/- appeared to have been received in the accounts of Zami Memorial Charitable Trust in their bank ledger A/c of Vijaya Bank, Shillong on 7.1.97 (D-30). This had also been confirmed by the Communications of M/s. Warren Tea Ltd, (D- 33 & 38).

2 (i) Zami memorial Charitable trust has received donations of Rs 1,00,000/ vide DD No. 535617 on 22.5.97 ( D -57). The source of the said amount is not reflected in books of accounts. Investigation conducted from the draft issuing bank namely UBI Kolkata confirmed that the said draft has been made against the cash of Rs 1,00,000/-. There is a prohibition of issuing of draft on deposit of cash in excess of Rs. 50,000/- (PW-29). It is evident from (PW-29) that an unidentified person had asked UBI, Calcutta to issue a demand draft in favour of Zami Memorial Charitable Trust, Shillong for Rs. 1,00,000/-. The said bank had issued draft in favour of Zami Memorial Charitable Trust, Shillong on UBI, Shillong. The same DD had been received in the account of Zami Memorial Charitable Trust maintained in their SB A/c No. 10308 of Vijay Bank, Shillong. It is not known from whom a draft of Rs. 1,00,000/- had been received by the trust. The amount may have come from any illicit source which should not be received by a charitable trust before knowing the source.

(ii) Regulation 19 of the Trust mandates that the trust to accept donations only from the sources which are identifiable. The regulation ( D- 9) reads as under

"19- charitable donations and gifts may be accepted by the governing body on proper receipts from:-

- (a) Governments and Public,
- (b) Institutions
- (c) Societies and Associations,
- (d) Private and Individuals

In this case no proper receipt in favour of donor is available. Nor the identity of the person from whom the donation was received is forthcoming. Mrs L.R Mithran, the main person of the trust, which has been discussed in detail in preceding paragraphs (discussions on article of charges no. 3), ought to have received donations only from the sources

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mentioned in the regulations and taken due permission from the department or intimated the department about the transactions which she has failed to do so.

(iii) The above facts/documents and sequence of events prove that Smt L.R.Mithran obtained a sum of Rs. 1 lakh in the name of Zami Memorial Charitable Trust (ZMCT) from unknown and dubious source through bank draft without intimation / permission from the competent authority.

3 (i) – Shri Allan Rokhan Mithran (aged 28 years approx.) the eldest son of Mrs. L.R. Mithran had been appointed to look after the export business of M/s. Kitply Industries Ltd, vide appointment letter no. KIT/ KAL/APP/97-98 DT-25.7.97 ( D-56). The contents of the letter are as under:- “ With reference to the discussion you had with us, we are pleased to intimate you that you have been selected to look after the coal business of the company on the following terms and conditions.” And the conditions are that : He would be stationed at either Ghasnapara or Tura nearest Tawa of export location. After confirmation he would be in-charge of their coal business. He would get house rent, conveyance, telephone charges etc.....”. The said fact of employment and further benefits like free housing etc are confirmed from documents such as –D-63,D-64, D-65, D-66and statement of Shri Ricky Momin(PW-15).

(ii) It is also forth coming from the aforesaid documents that close to the adjudication proceedings by the Mrs Mithran the then Commissioner in respect of M/s. Kitply Industries Ltd, they started export of coal through Gasuapara Land Custom Station under the jurisdiction of Shillong Excise Commissionerate and from 20.01.97 to 30.06.97 they had exported 2500 M.T. of coal to Bangladesh which is much less than the quantity usually exported by other parties hence such a venture is apparently not commensurate with the status of the company. After joining of Shri Allan Mithran no export of coal took place.

(iii) The fact that the employment has been given to Shri Allan Mithran by M/s Kit Ply when Mrs.L.R. Mithran was the commissioner of central excise having jurisdiction over the manufacturing unit of M/s kit Ply and also the fact that she has dropped demand against the unit only few months ago, indicate that the employment of Shri Allan was secured by Mrs. Mithran taking benefit of her good office. Despite being fully aware of her obligations of taking prior sanction of the government, before securing employment with a concern with whom she had official relations Mrs. Mithran has failed to obtain prior sanction of the government, and she also did not intimate the department subsequently about the employment of her son Shri Alan Mitran to the department.

24. Shri S.V. Singh, Presenting Officer further filed additional written brief vide his letter C.No. II/Addl. Commr/Con/CE/Kol-IV/2002/972 dated 19.8.2002 and contended that :

(i) He reiterates contents of his letter C.No.II/Addl. Commr/Con/CE/Kol-IV/2002 dated 1.8.2002 to stress that in terms of Rule 14(11) of CCA (CCS) Rules, 1965, the Charged Officer ought to have submitted list of documents and witnesses which were to be brought on record and examined in the defence at the time of preliminary hearing.

Since the charged officer has not exercised her option, permitting of submission of affidavit and examination of witness on behalf of the charged officer subsequent to the closure of the case/submission of written brief by the presenting officer was in contravention of the aforesaid rule and, therefore, should not have any bearing on the case.

(ii) The affidavit filed on behalf of charged officer except Shri A.R. Mithran, are identically worded wherein the name of the person giving affidavit only has been inserted by pen. All the affidavit prima-facie appeared to be tutored and not the true depiction of facts. The main crux of the affidavits and examination of witnesses namely:

1. Mr. H.S. Kumbhat, Statutory Auditor, ZMCT, Shillong.
2. Mrs. L.T. Zauvi, Lau-O-Sib, Madanriting, Shillong.
3. Mrs. L. Chungnungi, Madanriting, Shillong.
4. Mrs. Laldawni, Madanriting, Shillong.
5. Mrs. Lalniehchawngi, Madanriting, Shillong.
6. Mrs. Darthahniengi, Happy Valley, Shillong.
7. Mrs. L.T. Muani, Lau-O-Sib, Madanriting, Shillong.
8. Mrs. L.R. Mithran, Mercy Dez, Nongrim Hills, Shillong.
9. Mrs. Lalremawii, Madanriting, Shillong, seemed only to stress a point:
  - that the charged officer was not associating herself in day to day affairs of the trust,
  - that the trust was floated with the charitable objectives,
  - that the charged officer was not individually in a position to influence the decision making of the trust,
  - that the charged officer did not herself utilized the benefits of the trust,
  - that the charged officer did not solicit any donation from M/s Kitply Industries Ltd. etc.

(iii) It is relevant here to mention that it has already been on record that the donation to the trust started flowing from M/s Warren Tea Ltd., an associate firm of M/s Kitply Industries Ltd. on instruction from Shri S.P. Goenka, Chairman of M/s Kitply Industries Ltd. and advisor to the Board of M/s Warren Tea Ltd. in month of October, 1996 much before the trust came into being on dated 26.11.1996. This was the period when the charged officer was adjudicating the case of M/s Kitply Industries Ltd. Unless the persons forming the trust spread a word to solicit the donation, no one will come to know that a trust is coming to be created for which donations have to be made. The affidavit by Mrs. Lalpam Zauvi shows that she was the first president of the trust and during cross examination by the undersigned the witness tried to explain that conceptualization of the trust is pre-requisite to its coming into being as a legal entity by way of registration. However, it is interesting to note that none of the office bearers engaged himself/herself in the activity of getting the trust registered, it is on record that the challan No. 1643(D-3) for registration of the trust was tendered by Mrs. L.R. Mithran herself on 26.11.1996. This itself goes to demolish the contents of the affidavit mentioned above. It is also noteworthy that only Mrs. Mithran, charged officer was in conversation/contact with the

persons donating money prior to the legal existence of the trust. There is no evidence coming from any of the witness that any of the office bearer who were supposedly the President, Vice President etc. before dated 26.11.1996 ever disclosed their mind to M/s Warren Tea Ltd. or M/s Kitply Industries Ltd. Therefore, it is conclusively proved that the persons who tendered affidavit and examined were not in fact in control of the trust but mere dummies which is also proved from the fact discussed below:

(iv) The first and foremost condition in the Memorandum of Association under Chapter VIII is that "All direct descendents of P.L. Zammi (the late mother of Mrs. L.R. Mithran, Commissioner) shall be trustees and her husband P.V.K.T. Khuma shall be the Chief Patron, these shall be for life. On the demise of the said patron the trustees shall nominate one of the trustees as chief patron." The governing body have been entrusted with the powers of all decisions on issues relating to the society, but in case of dispute, in decision or difference of opinion, the trustees shall have the veto power (chapter IX of the Memorandum of Association). It means, trustees and patrons are enjoying absolute authority over the governing body. The governing body comprises (1) President, (2) Vice-President, (3) General Secretary, (4) Treasurer, (5) Finance Secretary, (6) Assistant General Secretary, (7) Three senior advisors, (8) Ten Executive Members, (9) Chief Patron and (10) Seven Trustees. Section 26 of the Rule and regulation states that "the governing body shall be appointed by the representative trustees one in two years."

(v) There were altogether seven trustees besides chief patron and trustees are represented by Mrs. L.R. Mithran, alias P.L. Lal Pari (chapter X of the Memorandum of Association). Rule 34 provides that "trustees (in this case Mrs. L.R. Mithran) may ask any office bearer to relinquish charge/post for any of the reasons in 14 and 15 subject to provisions of 16. Rule 37 provides that "All projects, schemes, receipts and expenditures shall require the approval of the governing body in general and trustee in specific." Rule 49 provides that "any proposal for amendment of the rules shall be in writing for consideration by the body and approval by the trustee". Rule 50 provides that "All appeal against rule 14 and 15, shall be decided by a committee consisting of Chief patron, representative trustee and any two other trustees." Rule 53 provides that "the trust may be dissolved by a resolution passed by 50% of the governing body and approval by representative trustee and chief patron. However, the proposal may be known to the general body." Rule 57 provides "Upon dissolution of trust and properties movable and immovable of whatever description and after satisfaction of all the debts and liabilities shall be transferred to the some other charitable organization having similar aims and objections." Rule 55 provides that "the representative trustee and the chief patron shall decide the name, address and particulars of such charitable organization as mentioned in 54 above."

(vi) During cross-examination of Mrs. Laldawni and Mrs. Lalpham Zauvi it has come out that the receipt of all the money in the trust were brought to the notice of Mrs. Mithran, she being the trustee. It is not out of place to mention that the charged officer (Mrs. Mithran) represent all the trustees, therefore, she knew the money receipt of Rs.1,00,000/- through D.D. No.535617 dt. 22.5.1997 from dubious source. Mrs. Mithran the charged officer who is in full control of the trust has neither taken prior permission

from the department nor she ever intimated to the department the fact of receipt of this money.

(vii) During the course of examination of Shri A.R. Mithran, son of Mrs. L.R. Mithran, it has been clearly brought on record that during the period when Shri A.R. Mithran got assignment/employment with M/s Kitply Industries Ltd. he was staying with his mother Mrs. L.R. Mithran, the charged officer. It has also coming out from the cross-examination that the said offer was received from M/s Kitply Industries Ltd. through post. It is also matter of record that Shri A.R. Mithran was looking for some job for quite sometime. It is not a mere coincidence that he got offer only from a person with whom her mother Mrs. L.R. Mithran was having official business, she being territorial Commissioner of Central Excise having jurisdiction over manufacturing unit of M/s Kitply Industries Ltd. More so she has already brought down a huge chunk of demand against them. The circumstances suggest that the assignment from M/s Kitply Industries Ltd. was obtained on account of her official influence and she knew these facts, as already mentioned Mr. A.R. Mithran was staying unemployed with his mother. Therefore, the allegation that she has failed to obtain prior sanction from the government in securing employment with the persons with whom she had official dealings stands proved.

25. The Charged Officer Mrs. L.R. Mithran, in her Defence Brief submitted as under:

(i) The record of examination and re-examination of the ten defence witnesses has been annexed as Annexure C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9 & C-10 respectively to this Defence Brief. The Charged Officer, Mrs. L.R. Mithran has also offered herself to be examined on her own behalf in terms of Rule 14(17) of the CCS (CCA) Rules. Record of her examination and cross-examination has been annexed and marked as Annexure C-11 to this Defence Brief.

(ii) It is submitted that the first witness who appeared for the defence was Shri T. Haokip, Additional Commissioner of Central Excise, Shillong (Annexure C-1). He stated that Mrs. L.R. Mithran had decided the show cause notice against M/s Kitply Industries Ltd. vide adjudication order dated 15.12.1996 in which she confirmed the demand of Rs.8,23,40,448/- only against the amount of Rs.35,79,07,804/- demanded in the show cause notice. He then stated that this amount was further reduced by Hon'ble Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) to an amount of Rs.58,96,580/- plus a penalty of Rs.10 lakhs vide its order dated 15.6.1999. This defence witness also admitted that the appeal filed by the Department, i.e. the Commissioner of Central Excise, Shillong before the Hon'ble Supreme Court against the said order of the Hon'ble CEGAT was dismissed by the Apex Court (Annexure B-2).

(iii) It is further submitted that the second witness who appeared for the defence was Shri H.S. Kumhat, Chartered Accountant, who had been auditing the records of Zami Memorial Charitable Trust since 1996 (Annexure "C-2"). He stated that he did not come across any instance where the movable and immovable property of Zami Memorial Charitable Trust was used for the benefit of Mrs. L.R. Mithran or any member of her family. He further stated that he did not come across any transaction where movable or

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immovable property or cash or anything of Zami Memorial Charitable Trust was used for any purpose other than the purpose for which the said Trust had been created.

(iv) It is contended that the next witness was Shri A.R. Mithran (Annexure "C-3") when asked as to how he got the temporary assignment with M/s Kitply Industries Limited for about 3 months, he stated that many of his friends were engaged in coal business and he also thought of joining the same business when he came in contact with Shri S.N.Jogodia of M/s Kitply Industries Limited. Shri A.R. Mithran stated that M/s Kitply Industries Limited were already in the business of coal export and were looking for someone to further their coal business at Ghasuapara at Tura. He stated that being convinced of his potential, M/s Kitply Industries Limited engaged him temporarily for 3 months on trial basis and also provided him the facilities like accommodation, transportation, electricity, telephone, etc. in order to promote their business. He stated categorically that her mother, Mrs. L.R. Mithran did not help him in getting this assignment/engagement with M/s Kitply Industries Limited. He stated further that he did not inform her mother about this. He stated that although he was temporarily staying in his mother's house in May, 1997, he was living independently. He stated further that since completing his graduation in 1993, he had been living independently and did not consider it necessary to inform his mother about his activities. He stated specifically that he did not inform his own about his assignment with M/s Kitply Industries Limited.

(v) It is further submitted that the other witnesses who appeared for the defence were Mrs. Laldawni (Annexure "C-4"), Mrs. Lalpham Zauvi (Annexure "C-5"), Ms. Lalneihchawngi (Annexure "C-6"), Ms. Darthahneing (Annexure "C-7"), Ms. L.T. Muani (Annexure "C-8"), Ms. Lawremawii (Annexure "C-9") and Mrs. L.Chungnungi (Annexure "C-10"). All these witnesses have been associated with Zami Memorial Charitable Trust as office bearers or its members. In their oral testimony before the Inquiring Authority, all of them stated categorically that :-

- (i) Mrs. L.R. Mithran did not have control over the decision of the Governing Body which took the final decisions;
- (ii) Mrs. L.R. Mithran was not authorized to handle cash, property or bank accounts of the Trust;
- (iii) The properties of the Trust were not used for any purpose other than the purposes for which the Trust had been created;
- (iv) Mrs. L.R. Mithran or any member of her family did not ever use any movable or immovable property of the Trust;
- (v) Mrs. L.R. Mithra did not solicit any donations in cash or any kind from any company, business house or organization for Zami Memorial Charitable Trust;
- (vi) No donations in cash or kind from any company, business house or organization were received through Mrs. L.R. Mithran.
- (vii) Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust as the same were looked after by the office bearers;
- (viii) The control over the Trust was with the Governing Body and not with Mrs. L.R. Mithran.

(vi) It is submitted that the charged officer Mrs. L.R. Mithran opted to be examined on her own behalf in terms of Rule 14(17) of the CCS (CCA) Rules. The questions put to her and the replies given by her are reproduced below :

- Q. It has been alleged by the Department that you floated a Trust, namely, Zami Memorial Charitable Trust in the name of your mother in between the hearing of the case of M/s Kitply Industries Limited on 17.9.1996 and passing of the order on 5.12.1996 in order to receive benefits from M/s Kitply Industries Ltd. through indirect route. Why is it that this Trust came into existence during that period?
- R. I have been in the Department since 34 years. During these long years, I have adjudicated thousands of cases, I have been engaged in charitable work and many a times, my charitable activities might have been during the time when one or more cases were pending for adjudication before me. Therefore, there is no link between the Trust and adjudication of the case of M/s Kitply Industries Limited.
- Q. When the Zami Memorial Charitable Trust was created, did you have only the cases of M/s Kitply Industries Limited pending before you?
- R. No. There were hundreds of cases.
- Q. Is there any nexus between the adjudication of the cases of M/s Kitply Industries Limited and the creation of the Trust?
- R. There is absolutely no connection. It is just incidental that the Trust came into existence at that time. In fact, I had hundreds of other cases pending before me at that time.
- Q. What is then the reasons that the Department has tried to allege a nexus between the adjudication order of M/s Kitply Industries Ltd. and the creation of Zami Memorial Charitable Trust?
- R. It is just because that it was one of the biggest of cases decided at Shillong which involved an allegation of evasion of duty of about Rs. 36 crores. As I had held that only about Rs. 8 crore approximately was recoverable, the Department suspected that I had confirmed a lesser amount for an illicit consideration.
- Q. Did not quantifying the amount of evasion of Rs. 8 crores approximately as against Rs. 36 crores alleged in the show cause notice, amount to showing undue favour to M/s Kitply Industries Limited?
- R. No. Very purpose of adjudication is to quantify the correct amount of duty payable by the assessee. It is not necessary that whatever has been demanded in the show cause notice should be confirmed. In fact, it has been my experience for the last 34 years of my service that show cause notices are issued for highly inflated amounts as some of the departmental officers want to take credit for having detected huge amounts of evasion.

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Q. In what way can you justify that your quantification of the duty liability of M/s Kitply Industries Limited did not amount to showing them undue favour?

R. This matter had been taken to the Hon'ble CEGAT where the duty liability of M/s Kitply Industries Limited in this case was reduced to about Rs. 59 lakhs, plus a penalty of Rs. 10 lakhs. Therefore, it is obvious that the quantification of duty liability of M/s Kitply Industries Limited by me was much higher than what has finally been decided by the Appellate Authority. Therefore, it cannot be said that I had shown any undue favour of M/s Kitply Industries Limited.

Q. Is it true that you have been associated with the Trust as one of the promoters of the Trust and you yourself deposited registration fee of Rs. 250?

R. Yes.

Q. It has been alleged that you obtained registration under "hurried perusal" with intention to receive benefits urgently. What do you say to that?

R. The application for the Trust was given in the normal course and the Registrar of Societies, Government of Meghalaya, issued the certificate in usual course. The Registrar of Societies, Government of Meghalaya, Shillong is a highly placed civil servant and nothing bars him from acting efficiently and issuing the registration certificate without delay. We did not determine the time which he should take for issuing the certificate.

Q. Was the Zami Memorial Charitable Trust created for the benefit of yourself and members of your family as you have been associated with the Trust as a permanent Trust?

R. The Trust was created for the benefit of women and children. I and my family are trustees and not beneficiaries. In fact, I have donated my land to the Trust. There is no question of myself or any members of my family benefitting from the Trust. The rules and regulations of the Trust do not permit the same.

Q. Did you have absolutely authority over the said Trust?

R. No. All the decisions of the Trust are taken by the Governing Body. I did not have any control over the decisions of the Governing Body.

Q. It has been alleged that all powers originated from you and ended with you so far so as the said Trust was concerned?

R. That is not true. The affairs of the Trust are looked after by the Governing Body and I have no control over their decisions.

Q. Did you participate in day-to-day affairs of the Trust?

R. No.

Q. Do you know Shri S.P. Goenka of M/s Kitply Industries Limited?

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R. I do not remember. I have dealt with thousands of assesseees and their representatives and it is not possible for me to remember any particular representative of any particular assessee.

Q. Did you solicit any donations from M/s Kitply Industries Limited or M/s Warren Tea Limited for the Zami Memorial Charitable Trust?

R. No. I never solicited any donations for the said Trust or any other Trust.

Q. Did you received (sic) a draft of Rs. 1 lakh in the name of Zami Memorial Charitable Trust from an unidentified and unknown person?

R. No. I never received any cash, draft or cheque meant for Zami Memorial Charitable Trust.

Q. How was the draft of Rs. 1 lakh in the name of the Trust received?

R. I am not aware of it. However during the course of this inquiry. I came to know that it was received by post in the Trust's office.

Q. Did the concerned office bearers of the Trust inform you about their having received the demand draft and a Tata diesel vehicle for use of the Trust at the relevant time?

R. No.

Q. Did you secure employment of your son, Mr. A.R. Mithran with M/s Kitply Industries Limited?

R. No. My son was 25 years of age at the relevant time. As a self-respecting mother, I would never beg anybody for employment of my children. They are competent enough by themselves. In fact, my son was independent and grown up and I was not even aware of his whereabouts at the relevant time. He lived on his own since he attained majority.

26. Leaving the controversial facts apart, these documents and evidence establish, inter alia, as under:

- (i) The Superintendent of Police, CBI, Guwahati lodged a Preliminary Inquiry Registration Report and a First Information Report against the alleged offences committed by Mrs. L.R. Mithran under the PC Act.
- (ii) Mrs. L.R. Mithran adjudicated an SCN issued to the Kitply Industries Limited whereby she confirmed the demand of Rs. 8,23,40,448 as against the amount of Rs. 35,79,07,804 demanded in the SCN.
- (iii) Mrs. L.R. Mithran took steps for creation and registration of Zami Memorial Charitable Trust in the memory of her mother. She herself deposited Rs. 250 as registration fee.

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- (iii) Mrs. L.R. Mithran took steps for creation and registration of Zami Memorial Charitable Trust in the memory of her mother. She herself deposited Rs.250 as registration fee.

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presently having my own business at Aizawl since 1998. That I have been living independently on my own since attaining the age of majority, and have neither asked for any help from my parents in the matter of my employment or business, nor have I considered it necessary to keep them informed about my profession, occupation, employment or business."

d) Affidavits sworn by the following 14 witnesses :

- i. Mrs. Lalthan Zauvi before the Judicial Magistrate First Class, Aizawal on 07.08.2002
- ii. Mrs. L. Chungnungi before the Judicial Magistrate First Class, Shillong on 25.07.2002.
- iii. Mrs. Laldawni before the Judicial Magistrate First Class, Shillong on 25.07.2002
- iv. Mrs. Lalniehchawngi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- v. Mrs. Lalremawii before the Judicial Magistrate First Class, Shillong on 25.07.2002
- vi. Mrs. Darthahniengi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- vii. Mrs. Hlimpuii before the Judicial Magistrate First Class, Shillong on 25.07.2002
- viii. Mrs. Esther Lianchhawni before the Judicial Magistrate First Class, Shillong on 25.07.2002
- ix. Mrs. L.T. Muani before the Judicial Magistrate First Class, Shillong on 25.07.2002
- x. Mrs. Van Lalruati before the Judicial Magistrate First Class, Aizawal on 07.08.2002
- xi. Mrs. Lilypuii before the Judicial Magistrate First Class, Shillong on 25.07.2002
- xii. Ms. Biaksangi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- xiii. Ms. Rose Mary Lalhmangaihzuali before the Judicial Magistrate First Class, Aizawal on 07.08.2002

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xiv. Mr. H.S. Kumbhat before the Judicial Magistrate First Class, Shillong on 22.07.2002

28. Broadly speaking, these 14 affidavits seek to establish that the trustee, Mrs. L.R. Mithran, never handled any cash or the bank account of the Trust as she was not authorized to do so; that Mrs. L.R. Mithran did not draw any money from the account of the Trust, nor she used any of the properties of the Trust in any manner whatsoever; that all decisions relating to the Trust are taken by the Governing Body/Executive Committee, and not by Mrs. L.R. Mithran herself; that all the properties of the Trust were used for charitable work and not for any other purpose; that Mrs. L.R. Mithran is neither authorized to use any movable or immovable property of the Trust for the use of herself or any member of her family, nor has she ever used any such property for herself or any member of her family; that no donation in cash or kind from any company, business house or organization or firm was received through her. Mrs. L.R. Mithran neither solicited any donations on behalf of the Trust nor she received any such donation on behalf of the Trust; that no information or intimation was given or required to be given to Mrs. L.R. Mithran on receipt of any donation by the Trust.

### ORAL EVIDENCE

29. The Charged Officer has presented ten witnesses. The Charged Officer, Mrs. L.R. Mithran also offered herself to be examined on her own behalf in terms of Rule 14 (17) of the CCS (CCA) Rules. The first witness for the Defence was Shri T. Haokip, Additional Commissioner of Central Excise, Shillong who stated that Mrs. L.R. Mithran had decided the show cause notice against M/s. Kitply Industries Limited vide adjudication order dated 15.12.1996 in which she confirmed the demand of Rs.8,23,40,448 only against the amount of Rs.35,79,07,804 demanded in the show cause notice. He then stated that this amount was further reduced by Hon'ble Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) to an amount of Rs.58,96,580 plus a penalty of Rs.10 Lakhs vide its order dated 15.06.1999. This defence witness also stated that the appeal filed by the Department i.e. the Commissioner of Central Excise, Shillong before the Hon'ble Supreme Court against the said order of the Hon'ble CEGAT was dismissed by the Apex Court.

1) The second witness who appeared for the defence was Shri H.S. Kumbhat, Chartered Accountant, who had been auditing the records of Zami Memorial Charitable Trust since 1996. He stated that he did not come across any instance where the movable and immovable property of Zami Memorial Charitable Trust was used for the benefit of Mrs. L.R. Mithran or any member of her family. He further stated that he did not come across any transaction where movable or immovable property or cash or anything of Zami Memorial Charitable Trust was used for any purpose other than the purpose for which the said Trust had been created.

2) The next witness was Shri A.R. Mithran who stated that many of his friends were engaged in coal business and he also thought of joining the same business when he came

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in contact with Shri S.N. Jagodia of M/s. Kitply Industries Limited. Shri A.R. Mithran stated that M/s. Kitply Industries Limited were already in the business of coal export and were looking for someone to further their coal business at Ghasuapara at Tura. He stated that being convinced of his potential, M/s. Kitply Industries Limited engaged him temporarily for 3 months on trial basis and also provided him the facilities like accommodation, transportation, electricity, telephone, etc. in order to promote their business. He stated that her mother, Mrs. L.R. Mithran did not help him in getting this assignment/engagement with M/s. Kitply Industries Limited. He stated further that he did not inform her mother about this. He stated that although he was temporarily staying in his mother's house in May 1997, he was living independently. He stated further that since completing his graduation in 1993, he had been living independently and did not consider it necessary to inform his mother about his activities. He stated further that he did not inform his own about his assignment with M/s. Kitply Industries Limited.

30. The Charged Officer also produced the following witnesses: Mrs. Laldawni, Mrs. Lalpam Zauvi, Ms. Lalneihchawngi, Ms. Darthahneing, Ms. L.T. Muani, Ms. Lawremawii and Mrs. L. Chungnungi. All these witnesses have been associated with Zami Memorial Charitable Trust as office bearers or its members. In their oral evidence before the Inquiring Authority, all of them stated that Mrs. L.R. Mithran did not have control over the decision of the Governing Body which took the final decisions; that Mrs. L.R. Mithran was not authorized to handle cash, property or bank accounts of the Trust; that the properties of the Trust were not used for any purpose other than the purposes for which the Trust had been created; that Mrs. L.R. Mithran or any member of her family did not ever use any movable or immovable property of the Trust; that Mrs. L.R. Mithran did not solicit any donations in cash or any kind from any company, business house or organization for Zami Memorial Charitable Trust; that no donations in cash or kind from any company, business house or organization were received through Mrs. L.R. Mithran; that Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust as the same were looked after by the office bearers; that the control over the Trust was with the Governing Body and not with Mrs. L.R. Mithran.

### EVIDENCE OF DEPARTMENTAL WITNESSES

31. The Defence Assistant in his reply dated 16.8.2002 has contended that oral evidence adduced on behalf of the Disciplinary Authority does not support the charges. In all 21 witnesses have appeared on behalf of the Disciplinary Authority. While these witnesses have supported only the facts which are undisputed and are listed out above, the cross-examination of these witnesses on behalf of Charged Officer revealed that they did not support the prosecution case in its entirety. The evidence tendered by some of them comes more to the support of the Charged Officer than the prosecution. In her Defence Brief, the Charged Officer has highlighted the replies given by some of these witnesses to show that they did not at all support the prosecution story. Some of the replies given by these prosecution witnesses to the questions put to them during cross-examination as highlighted in the Defence Brief are as under:

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a) Cross-examination of Shri D.K. Thakuria, Manager, M/s. Kitply Industries Limited

Q. Did you or your company KITPLY or any sister concern like Warren Tea give Smt. Mithran any cash?

Ans. No, Sir.

Q. Did you or your company or any associate company give Smt. Mithran any vehicle?

Ans. No, Sir.

Q. Did Smt. Mithran ask KITPLY Ltd. or Warren Tea to give her any donation to Zami Memorial Charitable Trust?

Ans. No, Sir.

Q. Did Smt. Mithran ask M/s. KITPLY Ltd. or M/s. Warren Tea or any other associate company for any favour?

Ans. No, Sir.

Q. Is it true that your company donated one vehicle to Zami Memorial Charitable Trust?

Ans. Yes.

Q. Did you or your company or M/s. Warren Tea Ltd. at any time were asked by Smt. Mithran to donate any vehicle or money to Zami Memorial Charitable Trust?

Ans. No, Sir.

Q. Did Smt. L.R. Mithran at any time give any direction to you or your company KITPLY or Warren Tea for donating any vehicle or any cash?

Ans. No, Sir.

Q. Did any other person representing Smt. L.R. Mithran approach you or your company KITPLY or Warren Tea for donating any vehicle or cash to the Trust?

Ans. No, Sir.

Q. Did Smt. L.R. Mithran ask you or your company M/s. KITPLY or Warren Tea for employment of her son?

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Ans. No, Sir.

Q. Do you categorically say that Smt. L.R. Mithran did not ask you or your company KITPLY or Warren Tea for donation of a vehicle or any money or for the employment of her son?

Ans. Yes, I categorically say so."

b) Cross-examination of Shri Shambhunath Jajodia, Director of M/s. Kitply Industries Limited:

Q:- Did she ask you or your company for any favour, donation or money for her or for any members of her family?

A:- No Sir.

Q:- Did she ask for the employment of her son in your company?

A:- No Sir.

Q:- Did your Company ever inform Mrs. L.R. Mithran, Commissioner that her son was employed or associated with M/s. Kitply Industries Limited?

A:- No, we did not inform her.

c) Cross-examination of Shri P. Haridasan Nair, Executive (Legal), M/s. Kitply Industries Limited

“Q:- Did Mrs. L.R. Mithran ask you to donate any vehicle or any cash to M/s. Zami Memorial Charitable Trust? Did Mrs. L.R. Mithran at any time gave any direction to you or your Company for donating any vehicle or cash to Zami Memorial Charitable Trust?

A:- No, I am not aware of any such requisition.

Q:- Did any other person representing Mrs. L.R. Mithran approach you or your Company for donating any vehicle or cash to the Zami Memorial Charitable Trust?

A:- No Sir, nobody approached me.

Q:- Did Mrs. L.R. Mithran ask your Company for employing her son in your Company?

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A:- No, Sir. "

d) Cross-examination of Shri Anil Kumar Banka, Director, M/s. Kitply Industries Limited

"Q:- Did Mrs. L.R. Mithran ask you to donate any vehicle or any cash to M/s. Zami Memorial Charitable Trust? Did Mrs. L.R. Mithran at any time gave any direction to you or your Company for donating any vehicle or cash to Zami Memorial Charitable Trust? "

A:- No, never Sir. I personally do not know the name of the Zami Memorial Charitable Trust which you are referring you.

Q:- Did any other person representing Mrs. L.R. Mithran approach you or your Company for donating any vehicle or cash to the Zami Memorial Charitable Trust?

A:- No Sir, nobody approached us.

Q:- Did Mrs. L.R. Mithran ask you for employing her son in your Company?

A:- No Sir.

Q:- Do you categorically say that Mrs. L.R. Mithran did not ask you or your Company for any favour, donation or employment of any member of her family?

A:- No Sir, she never asked for any such favour."

e) Cross-examination of Smt.Latchanglian Sailow, Inspector of Central Excise

"Q. Were any funds of the trust used for the benefit of Mrs. L.R. Mithran or any member of her family?

Ans. No. Funds were not used for benefit of Mrs. L.R. Mithran or any member of her family.

Q Did Mrs. L.R. Mithran or any trustee of the trust withdraw any money from the Bank account of the Z.M.C.T. at any time?

Ans. No.

Q Is Mrs. L.R. Mithran or any member of her family authorized to withdraw any money from the account of ZMCT?

Ans. No.

Q Who is authorised to withdraw amounts from the account of ZMCT?

Ans. Any two of the following - General Secretary of the Trust, Treasurer of the Trust, Financial Secretary, can withdraw the amount.

Q Did Mrs. L.R. Mithran hold any of these posts in the Trust?

Ans. No.

Q Did Mrs. L.R. Mithran has a right to appoint these office bearers mentioned in previous question?

Ans. No, Mrs. Mithran is not authorized to appoint. Only the senior advisors are authorized to appoint the office bearers of the trust.

Q Did the ZMCT procure any funds or donation through Mrs. L.R. Mithran?

Ans. No.

Q Were any funds of the trust ever used directly or indirectly for the benefit of Mrs. L.R. Mithran or the members of her family?

Ans. No.

Q Were any funds of ZMCT used under directions of Mrs. L.R. Mithran for any member of her family?

Ans. No.

32. It has been argued on behalf of the Charged Officer that the Presenting Officer had started with his presentation with charge no. 2 followed by charge no. 3 in his brief dated 18<sup>th</sup> July, 2002 and he has relegated the presentation on charge no. 1 to the last. This change of sequence speaks for itself.

(1) It is submitted that while pressing for charge no. 2, the Presenting Officer pleads that Mrs. L.R. Mithran sliced down the Central Excise duty evasion by M/s Kitply Industries Limited to Rs. 8,13,40,448 (Rs. 8.13 crores approx.) by her adjudication order and thereby caused a loss of Rs. 27,65,67,356. He makes no mention of the order dated 15.6.1999 passed by the Hon'ble Customs, Excise and Gold (Control) Appellate Authority (CEGAT) where this amount was further sliced down to a much smaller amount of Rs. 58,96,580 (Rs. 58.96 lakhs approx.) plus penalties of Rs. 10 lakhs. If the argument of the Presenting Officer is to be accepted, while Mrs. L.R. Mithran's order caused a loss of Rs.27,65,356 i.e. Rs.27.65 crores approx. to the Government, the order

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of the Hon'ble CEGAT caused a loss of much bigger amount of Rs. 35,20,11,224 (Rs. 35.20 crores approx.). If the Presenting Officer's argument is to be accepted, the Hon'ble Supreme Court's order accepting the CEGAT's order and rejecting the Civil Appeal filed by the Department too caused a loss of Rs. 35,20,11,224 to the Government. The prosecution's own witness, Shri A.K. Das had stated in his testimony (Annexure A-21) that it is not obligatory for the adjudicating authority to confirm the same amount as has been demanded in the show cause notice. Even otherwise, it will be absurd to say that adjudicating authority has no option but to confirm each and every show cause notice and if he does not, he causes a loss to the Government. Needless to add, the Presenting Officer's arguments have no legs to stand on.

(2) It has been argued that the presenting officer has proceeded to argue that there is a nexus between creating the trust in the name of late mother of Mrs. L.R. Mithran and the adjudication of the show cause notice issued to M/s Kitply Industries Limited. He has tried to establish this nexus by relying on documents D-7, D-8, D-9 and D-10, which have already been thoroughly analysed in chapter IV of this Defence Brief. He pleads that Mr. L.R. Mithran was "solely involved" in the formation of the Trust in the name of her mother and "was always in total control of the Trust." The first document he has relied upon is Challan No. 643 under which a registration fee of Rs.250/- was paid on 26.9.1996. This document cannot prove that she was solely in total control of the Trust nor can it prove any nexus between the Trust and M/s Kitply Industries Ltd. The document relied upon in the Charge Sheet and numbered as D-8 itself shows that the Trust was brought into existence by 18 persons, all of whom had signed the said document relating to the formation of the Trust. Therefore, the allegation of her being "solely involved" is baseless at the face of it. Just because registration of the Trust and the adjudication of one particular case happened in the same quarter of the year does not prove a nexus. It will be absurd to say that whatever was done by Mrs. L.R. Mithran when the adjudication order was passed, has a nexus only to the said adjudication order. Mrs. L.R. Mithran has passed a number of adjudication orders during the period and the Presenting Officer has not shown a single reason as to why he sees nexus between the registration of the Trust and the adjudication order passed in the case of M/s Kitply Industries Ltd., and not between the Trust and any other adjudication order. The next document relied upon by the Presenting Officer to prove the nexus is the registration certificate of the Trust which was issued on 28.11.1996. The Presenting Officer pleads that registration was made under hurried persuasion. It is not clear what leads him to the conclusion that there was hurried persuasion with intention to seek the benefit urgently. He seems to have forgotten the fact that the registration certificate was issued by the Registrar of Societies, Government of Meghalaya, who is a highly placed State Government Official. If the said functionary of the Government of Meghalaya acted efficiently, Mrs. L.R. Mithran cannot be charged with having obtained the registration under "hurried persuasion with intention to receive the benefit urgently". The allegation casts grave aspersions on a senior officer of the State Government and is not in good taste.

(3) It is contended that the Presenting Officer next places reliance on the Memorandum of Association and the Rules and Regulations of the Trust to argue that

Mrs. L.R. Mithran has permanent family ownership over the trust and all powers were ultimately concentrated with Mrs. L.R. Mithran with a sole motive to utilize the Trust for the benefit of herself and for the members of her family. It appears the contents of these documents have not been carefully gone through. There is also a lack of appreciation of the significance of the terms "trustee" and "beneficiary". Mrs. L.R. Mithran is one of the trustees but not the 'beneficiary'. Secondly, the control over the Trust is with the Governing Body as per para 25 of the Rules and Regulations of the Trust. The Governing Body of the Trust consists of the following:-

- (i) President
- (ii) Vice-President
- (iii) General Secretary
- (iv) Finance Secretary
- (v) Treasurer
- (vi) Assistant General Secretary
- (vii) Advisors
- (viii) Executive Members
- (ix) Representatives
- (x) Trustees.

(4) It is submitted that Mrs. L.R. Mithran could at the most be a representative trustee in the Governing Body. Attention is also invited to all the documentary evidence referred to in Chapter VI, i.e. affidavits sworn by Mrs. Lalthan Zauvi (Annexure B-4), Ms. L. Chungnungi (Annexure B-5), Ms. Laldawni (Annexure B-6), Ms. Lalneihchawngi (Annexure B-7), Ms. Lalremawii (Annexure B-8), Ms. Darthahnieng (Annexure B-9), Ms. Hlimpuii (Annexure B-10), Ms. Esther Lianchhawngi (Annexure B-11), Ms. L.T. Muani (Annexure B-12), Mrs. Vanlalruati (Annexure B-13), Ms. Lilypuii (Annexure B-14), Ms. Biaksangi (Annexure B-15), Ms. Rose Mary Lalhmangaihzuai (Annexure B-16), Shri H.S. Kumbhat (Annexure B-17) and oral evidence by Mrs. Laldawni (Annexure C-4), Mrs. Lalpham Zauvi (Annexure C-5), Ms. Lalneihchawngi (Annexure C-6), Ms. Darthanhneing (Annexure C-7), Ms. L.T. Muani (Annexure C-8), Ms. Lawremawii (Annexure C-9) and Mrs. L. Chungnungi (Annexure C-10). Even the Department's own witness Smt. Latchanglian Sailow, whose testimony is at Annexure A-14, had stated categorically that Mrs. L.R. Mithran had no powers to appoint the members of the Governing Body of the Trust nor had she any control over the Trust nor she benefitted in any manner from the Trust. The Presenting Officer pleads that "though the Governing Body had been exhibited sole authority of the Trust, but in practice, the trustees are all-in-all of the Trust". Nowhere had he mentioned a single piece of evidence which shows this "practice". The Presenting Officer's argument is based on his imagination about the 'practice' in the Trust rather than the facts, and all the oral and documentary evidence demolishes his argument. Just because Mrs. L.R. Mithran is the representative of all trustees, the Presenting Officer infers that 'all powers originate from her and ended with her.' He further inferred that 'the Trust is of Mrs. L.R. Mithran, the Charged Officer.' It has already been shown by documentary evidence as well as oral evidence that the Trust is controlled by the Governing Body in which the trustees are just one of the nine

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constituents. The Presenting Officer has based his observations on suspicions rather than the hard facts which have been proved by the Defence beyond an iota of doubt.

(5) It is argued that the Presenting Officer next imagines an 'indirect route' for receipt of donations to the Trust. He has tried to link Shri S.P. Goenka of M/s Kitply Industries Ltd. with M/s Warren Tea Limited, and donations given by them with a particular adjudication order passed by Mrs. L.R. Mithran. This is a figment of imagination. The prosecution witnesses, namely, (i) Shri D.K. Thakuria (Annexure A-4), (ii) Shri Sanbhunath Jajodia (Annexure A-5), (iii) Shri P. Haridasan Nair (Annexure A-6) and (iv) Shri Anil Kumar Banka (Annexure A-7) and defence witnesses, namely Mrs. Laldawni (Annexure C-4), Mrs. Lalpham Zauvi (Annexure C-5), Ms. Lalneihchawngi (Annexure C-6), Ms. Darthanhneing (Annexure C-7) and also Ms. L.T. Muani (Annexure C-8), Ms. Lawremawii (Annexure C-9) and Mrs. L. Chungnungi (Annexure C-10) have stated categorically that no donations were secured through Mrs. L.R. Mithran nor was she aware of these donations at the relevant time. If the Presenting Officer wanted to say that these donations were by way of bribe to Mrs. L.R. Mithran, he ought to have proven the same. Mrs. L.R. Mithran is not answerable for the standing which Shri Goenka has in M/s Kitply Industries Ltd. or in M/s Warren Tea Ltd. and it will be absurd to say that this imaginary story was an 'indirect route' to receive any illicit benefits from M/s Kitply Industries Ltd. It is not denied that M/s Kitply Industries Ltd. and M/s Warren Tea Ltd. gave donations to the Trust. Therefore, a truck load of documents are not required to prove this undisputed fact. What the prosecution and the Presenting Officer have failed miserably to establish is that these donations were given at the instance of Mrs. L.R. Mithran or were connected to the adjudication order passed by Mrs. L.R. Mithran. More suspicions, however grave, do not prove the allegations made in the Charge Sheet, particular when a large number of prosecution witnesses, and defence witnesses have stated categorically that there is no nexus between these donations and the adjudication order passed by Mrs. L.R. Mithran.

(6) It is submitted that the Presenting Officer has further imagined that Shri S.P. Goenka, Chairman of M/s Kitply Industries Ltd. came to know that there was going to be formed a Trust by Mrs. L.R. Mithran and he had to donate a vehicle to the Trust. According to him, there was a pre-planned strategy between Mrs. L.R. Mithran, Commissioner of Central Excise, Shillong and Shri S.P. Goenka, Chairman of Kitply Industries Ltd. to receive benefit in exchange for a favour to be shown during an adjudication in the case of M/s Kitply Industries Ltd. Why the said Shri S.P. Goenka has not been produced as Prosecution Witness? Why no statement of his was recorded and brought on record? There has been an attempt to hide the truth behind a long story. What the Presenting Officer should have done is to point to the evidence which establishes the nexus. The Presenting Officer has failed miserably to prove that the donations were given at the instance of Mrs. L.R. Mithran or she was aware of these donations. He has only tried to pursue his own imaginations and suspicions.

(7) It is argued that coming to Charge No.3, he stresses that Zami Memorial Caritable Trust received a donation of Rs.1 lakh by a demand draft for which the payment had been made in cash. He argues that there was a prohibition of issuing of demand draft on

deposit of cash in excess of Rs.50,000. He pleads further than an unidentified man had asked Union Bank of India, Kolkata to issue the said demand draft of Rs.1 lakh in favour of Zami Memorial Charitable Trust. He further says that it is not known from whom the demand draft of Rs.1 lakh had been received by Zami Memorial Charitable Trust. There is no doubt about the facts stated by the Presenting Officer, but where is the connection between these facts and Mrs. L.R. Mithran? If an unknown person makes a voluntary donation to a Trust, which is a common practice in India as many donors do not like to be identified, it is absurd to charge Mrs. L.R. Mithran for an unknown person having donated some money to the Trust. It is stated by the Investigating Officer in the case himself (Annexure A-1) that the said draft had been received by post in the Trust's office. The Presenting Officer states further that Regulation 19 of the Trust mandates that donations should be accepted only from identifiable sources. There is no such stipulation in the regulation of the Trust. Any in any case, Mrs. L.R. Mithran cannot be held responsible if the said Trust received a donation by post from an unidentified person. The Presenting Officer's allegation that Mrs. L.R. Mithran obtained a sum of Rs.1 lakh by the said demand draft in the name of Zami Memorial Charitable Trust from an unknown and dubious source without intimation or permission from the competent authority, is absolutely baseless in the face of the fact that she never received any such demand draft nor was she even aware of it. The evidence on record clearly shows that the draft was received by post in the Trust's office and Mrs. L.R. Mithran had no knowledge about it.

(8) It is submitted that the Presenting Officer has tried his best to pursue the allegation that Mrs. L.R. Mithran procured the employment of her son, Mr. A.R. Mithran with M/s Kitply Industries Ltd. without obtaining prior sanction of the Government. It is abundantly clear as per the evidence referred to in Chapter III, testimonies of Mr. D.K. Thakuria, Manager of Kitply Industries Ltd. (Annexure A-4), Mr. Shambhunath Jajodia, Director of M/s Kitply Industries Ltd. (Annexure A-5), Mr. P. Haridasan Nair, Executive (Legal) of M/s Kitply Industries Ltd. (Annexure A-6) and Mr. Anil Kumar Banka, Director of M/s Kitply Industries Ltd. (Annexure A-7), the affidavit sworn by Mr. A.R. Mithran before the Judicial Magistrate First Class, Shillong (Annexure B-3) and also the oral testimony of Mr. A.R. Mithran before the Inquiring Authority on 10.8.2002 that Mrs. L.R. Mithran had neither secured the employment of her son at any time with any Company nor was she even aware of her son's temporary assignment with M/s Kitply Industries Ltd. at the relevant time.

(9) To conclude, it has been contended that the Presenting Officer has made only a feeble attempt to pursue and establish an imaginary story. While he has highlighted his suspicions, he did not have any evidence to support the allegations made in the Charge Sheet.

### **ANALYSIS OF EVIDENCE ON RECORD**

33. In this portion of the Report, I propose to compare the worth of contending claims.

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The Presenting Officer has contended that case of duty evasion by M/s. Kitply Industries was detected by the officers of Director General, Anti-Evasion, Kolkata in 1994 and the same was forwarded to the Shillong Commissionerate as the factory premises of the said firm falls within the jurisdiction of Shillong. The notice to show cause No.Ch.44/6/Adjn/95/77278-84 (3) dated 28.02.1995 - (Document No.3) was issued for evasion of duty of Rs.35,79,07,804.00. Mrs. L.R. Mithran, Commissioner heard the case on 17.9.1996 in her office at Shillong. During the hearing, Shri S.P. Goenka, Chairman of M/s. Kitply Industries along with an advocate attended the personal hearing on behalf of the company (Document No.4). However the statement of Shri Shambhunath Jajodia (PW-4) shows that during personal hearing besides Shri S.P. Goenka and an advocate Shri Shambhunath Jajodia, Shri Harisadan Nair of the company were also present. The final adjudication order was issued on 5.12.96 vide order no. 32/Commissioner/Ch-44/CE/96 dated 5.12.96 (D-5). The adjudication order sliced down the central excise duty to Rs.8,13,40,448.00 to be paid by the said firm thereby causing a loss of Rs.27,65,67,356.00 to the Govt. Thus the fundamental basis of the case is the slicing down of the duty demanded originally in the show cause notice. However, the Charged Officer, on the other hand has countered the above conclusion by stating that while pressing for Charge No.2, the Presenting Officer pleads that Mrs. L.R. Mithran sliced down the Central Excise duty evasion by M/s. Kitply Industries Limited to Rs.8,13,40,448 (Rs.8.13 Crores approx.) by her adjudication order and thereby caused a loss of Rs.27,65,67,356. He makes no mention of the order dated 15.06.1999 passed by the Hon'ble Customs, Excise and Gold (Control) Appellate Authority (CEGAT) where this amount was further sliced down to a much smaller amount of Rs.58,96,580 (Rs.58.96 lakhs approx.) plus penalties of Rs.10 lakhs. If the argument of the Presenting Officer is to be accepted, while Mrs. L.R. Mithran's order caused a loss of Rs.27,65,67,356 i.e. Rs.27.65 Crores approx. to the Government, the order of the Hon'ble CEGAT caused a loss of much bigger amount of Rs.35,20,11,224 (Rs.35.20 Crores approx.). If the Presenting Officer's argument is to be accepted, the Hon'ble Supreme Court's order accepting the CEGAT's order and rejecting the Civil Appeal filed by the Department too caused a loss of Rs.35,20,11,224 to the Government. The prosecution's own witness, Shri A.K. Das had stated in his testimony (Annexure A-21) that "it is not obligatory for the adjudicating authority to confirm the same amount as has been demanded in the show cause notice. Even otherwise, it will be absurd to say that adjudicating authority has no option but to confirm each and every show cause notice and if he does not, he causes a loss to the Government. Needless to add, the Presenting Officer's arguments have no legs to stand on." These facts would, therefore, show that it is not possible to hold the view that confirmation of a demand of Rs.8.13 crores only as against the original demanded amount of Rs.35.20 crores only, could be termed as slicing down or any illegality or any motives could be attached with it.

34. The Presenting Officer has argued that there is a nexus between creating the Trust in the name of late mother of Mrs. L.R. Mithran and the adjudication of the show cause notice issued to M/s. Kitply Industries Limited. He has tried to establish this nexus by relying on documents D-7, D-8, D-9 and D-10 which have been thoroughly analysed. He has pleaded that Mrs. L.R. Mithran was "solely involved" in the formation of the Trust in the name of her mother and "was always in total control of the

Trust." The first document he has relied upon is Challan No.643 under which a registration fee of Rs.250/- was paid on 26.09.1996. It has been argued on behalf of the Charged Officer that this document cannot prove that she was solely in total control of the Trust nor can it prove any nexus between the Trust and M/s. Kitply Industries Ltd. Further the document relied upon in the Charge Sheet and numbered as D-8 itself shows that the Trust was brought into existence by 18 persons, all of whom had signed the said document relating to the formation of the Trust. The Charged Officer has pleaded that the allegation of her being "solely involved" is baseless at the face of it. Just because registration of the Trust and the adjudication of one particular case happened in the same quarter of the year does not prove a nexus. It will be absurd to say that whatever was done by Mrs. L.R. Mithran when the adjudication order was passed, has a nexus only to the said adjudication order. Mrs. L.R. Mithran has passed a number of adjudication orders during the period and the Presenting Officer has not shown a single reason as to why he sees nexus between the registration of the Trust and the adjudication order passed in the case of M/s. Kitply Industries Ltd., and not between the Trust and any other adjudication order. The next document relied upon by the Presenting Officer to prove the nexus is the registration certificate of the Trust which was issued on 28.11.1996. The Presenting Officer pleads that registration was made under "hurried persuasion". The Charged Officer counters it by saying that it is not clear what leads him to the conclusion that there was "hurried persuasion with intention to seek the benefit urgently." Further he seems to have forgotten the fact that the registration certificate was issued by the Registrar of Societies, Government of Meghalaya, who is a highly placed State Government Official. If the said functionary of the Government of Meghalaya acted efficiently, Mrs. L.R. Mithran cannot be charged with having obtained the registration under "hurried persuasion with intention to receive the benefit urgently". Further the allegation casts grave aspersions on a senior officer of the State Government and is not in good taste. It would thus appear that the allegations that there is a nexus in the adjudication order in the case of Kitply and the floating of Trust or that Mrs. L.R. Mithran was in total control and Trust are not supported by documentary evidence.

The Presenting Officer places reliance on the Memorandum of Association and the Rules and Regulations of the Trust has argued that Mrs. L.R. Mithran has permanent family ownership over the Trust and all powers were ultimately concentrated with Mrs. L.R. Mithran with a sole motive to utilize the Trust for the benefit of herself and for the members of her family. It is countered by the Charged Officer stating that the contents of these documents have not been carefully gone through. There is also a lack of appreciation of the significance of the terms "trustee" and "beneficiary". It is further contended that Mrs. L.R. Mithran is one of the trustees but not the "beneficiary". Secondly, the control over the Trust is with the Governing Body as per Para 25 of the Rules and Regulations of the Trust. The Governing Body of the Trust consists of the President, Vice-President, General Secretary, Finance Secretary, Treasurer, Assistant General Secretary, Advisors, Executive Members, Representatives Trustees. Mrs. L.R. Mithran could at the most be a representative trustee in the Governing Body. Attention has been invited by the Charged Officer to all the documentary evidence referred to in Chapter VI i.e. affidavits sworn by Mrs. Lalthan Zauvi (Annexure 'B-4'), Ms. L. Chungnungi (Annexure 'B-5'), Ms. Laldawni (Annexure 'B-6'), Ms. Lalneihchawngi

(Annexure 'B-7'), Ms. Lalremawii (Annexure 'B-8'), Ms. Darthahnieng (Annexure 'B-9'), Ms. Hlimpuui (Annexure 'B-10'), Ms. Esther Lianchhawni (Annexure 'B-11'), Ms. L.T. Muani (Annexure 'B-12'), Mrs. Vanlalruati (Annexure 'B-13'), Ms. Lilypuii (Annexure 'B-14'), Ms. Biaksangi (Annexure 'B-15'), Ms. Rose Mary Lalhmangaihzuai (Annexure 'B-16'), Shri H.S. Kumbhat (Annexure 'B-17') and oral evidence by Mrs. Laldawni (Annexure 'C-4'), Mrs. Lalpham Zauvi (Annexure 'C-5'), Ms. Lalneihchawngi (Annexure 'C-6'), Ms. Darthanhneing (Annexure 'C-7'), Ms. L.T. Muani (Annexure 'C-8'), Ms. Lawremawii (Annexure 'C-9') and Mrs. L. Chungnungi (Annexure 'C-10'). It is argued that Even the Department's own witness Smt. Latchanglian Sailow, whose testimony is at Annexure: A-14, had stated categorically that Mrs. L.R. Mithran had no powers to appoint the members of the Governing Body of the Trust nor had she any control over the Trust nor she benefitted in any manner from the Trust. The Presenting Officer has pleaded that "though the Governing Body had been exhibited sole authority of the Trust, but in practice, the trustees are all-in-all of the Trust." However, Charged Officer contends that nowhere has he mentioned a single piece of evidence which shows this "practice". The Presenting Officer's argument is based on his imagination about the "practice" in the Trust rather than the facts, and all the oral and documentary evidence demolishes his argument. The Charged Officer further argued that just because Mrs. L.R. Mithran is the representative of all trustees, the Presenting officer infers that "all powers originate from her and end with her." He further inferred that "the Trust is of Mrs. L.R. Mithran, the Charged Officer". It has already been shown by documentary evidence as well as oral evidence that the Trust is controlled by the Governing Body in which the trustees are just one of the nine constituents. The Presenting Officer has based his observations on suspicions rather than the hard facts which have been proved by the Defence beyond an iota of doubt. The above analysis would appear to indicate that governing body controlled the Trust, which was a charitable Trust and Trust was not meant for private benefit of the family of Mrs. L.R. Mithran.

The Presenting Officer has indicated an "indirect route" for receipt of donations to the Trust. He has pointed to the link of Shri S.P. Goenka of M/s. Kitply Industries Limited with M/s. Warren Tea Limited, and donations given by them with a particular adjudication order passed by Mrs. L.R. Mithran. Charged Officer argued that this is a figment of imagination. According to Defence, the prosecution witnesses, namely, (i) Shri D.K. Thakuria (Annex. A-4), (ii) Shri Shambhunath Jajodia (Annex. A-5), (iii) Shri P. Haridasan Nair (Annex. A-6) and (iv) Shri Anil Kumar Banka (Annex. A-7) and defence witnesses, namely, Mrs. Laldawni (Annexure 'C-4'), Mrs. Lalpham Zauvi (Annexure 'C-5'), Ms. Lalneihchawngi (Annexure 'C-6'), Ms. Darthanhneing (Annexure 'C-7') and also Ms. L.T. Muani (Annexure 'C-8'), Ms. Lawremawii (Annexure 'C-9') and Mrs. L. Chungnungi (Annexure 'C-10') have stated categorically that no donations were secured through Mrs. L.R. Mithran nor was she aware of these donations at the relevant time. It is argued that if the Presenting Officer wanted to say that these donations were by way of bribe to Mrs. L.R. Mithran, he ought to have proven the same. It is contended that Mrs. L.R. Mithran is not answerable for the standing which Shri Goenka has in M/s. Kitply Industries Limited or in M/s. Warren Tea Limited and it will be absurd to say that this imaginary story was an "indirect route" to receive any illicit benefits from M/s. Kitply Industries Limited. It is not denied that M/s. Kitply Industries Limited and M/s.

Warren Tea Limited gave donations to the Trust. Therefore, a truck load of documents are not required to prove this undisputed fact. It is pointed out that what the prosecution and the Presenting Officer have failed miserably to establish is that these donations were given at the instance of Mrs. L.R. Mithran or were connected to the adjudication order passed by Mrs. L.R. Mithran. It is mere suspicions, howsoever grave, do not prove the allegations made in the Charge Sheet, particularly when a large number of prosecution witnesses, and defence witnesses have stated categorically that there is no nexus between these donations and the adjudication order passed by Mrs. L.R. Mithran.

The Presenting Officer has claimed that Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited came to know that there was going to be formed a Trust by Mrs. L.R. Mithran and he had to donate a vehicle to the Trust. According to him, there was a pre-planned strategy between Mrs. L.R. Mithran, Commissioner of Central Excise, Shillong and Shri S.P. Goenka, Chairman of M/s. Kitply Industries Limited to receive benefit in exchange for a favour to be shown during an adjudication in the case of M/s. Kitply Industries Limited. The Defence has argued that if it be so, then why the said Shri S.P. Goenka has not been produced as Prosecution Witness? Why no statement of his was recorded and brought on record? It is claimed that there has been an attempt to hide the truth behind a long story. What the Presenting Officer should have done is to point to the evidence which establishes the nexus. The Presenting Officer has failed miserably to prove that the donations were given at the instance of Mrs. L.R. Mithran or she was even aware of these donations. He has only tried to pursue his own imaginations and suspicions."

35. In relation to Charge No.3, the Presenting Officer has contended that "Zami Memorial Charitable Trust had received donations of Rs.1,00,000 vide demand draft no.535617 on 22.05.1997 (D-57). The source of the said amount is not reflected in books of accounts. Investigation conducted from the draft issuing bank namely, United Bank of India, Kolkata confirmed that the said draft has been made against the cash of Rs.1,00,000. There is a prohibition of issuing of draft on deposit of cash in excess of Rs.50,000 (PW-29). It is evident from (PW-29) that an unidentified person had asked United Bank of India, Kolkata to issue a demand draft in favour of Zami Memorial Charitable Trust, Shillong for Rs.1,00,000. The said bank had issued draft in favour of Zami Memorial Charitable Trust, Shillong on United Bank of India, Shillong. The same demand draft had been received in the account of Zami Memorial Charitable Trust maintained in their SB a/c. No.10308 of Vijaya Bank, Shillong. It is not known from whom a draft of Rs.1,00,000 had been received by the Trust. The amount may come from any illicit source which should not be received by a Charitable Trust before knowing the source. It is pointed out that Regulation 19 of the Trust mandates that the Trust to accept donations only from the sources which are identifiable. The Regulation 19 (D-9) also provided that Charitable donations and gifts may be accepted by the governing body on proper receipts from Govt. and public institutions, societies and Associations and private individuals.

In this case, no proper receipt in favour of donor is available. Nor the identify of the person from whom the donation was received is forthcoming. Mrs. L.R. Mithran, the

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main person of the Trust, which has been discussed in detail in preceding paragraphs (discussions on Article of Charge No.3), ought to have received donations only from the sources mentioned in the Regulations and taken due permission from the Department or intimated the Department about the transaction which she has failed to do so.

The above facts/documents and sequence of events according to Presenting Officer prove that Mrs. L.R. Mithran obtained a sum of Rs.1 lakh in the name of Zami Memorial Charitable Trust from unknown and dubious source through bank draft without intimation/permission from the competent authority and failed to maintain absolute integrity thereby contravened Rule 18 (3) and 3 (1) of CCS Conduct Rules, 1964. "

The Charged Officer has stated that the Presenting Officer has contended that Zami Memorial Charitable Trust received a donation of Rs.1 Lakh by a demand draft for which the payment had been made in cash. He has further argued that there was a prohibition of issuing of demand draft on deposit of cash in excess of Rs.50,000. He has pleaded further that an unidentified man had asked Union Bank of India, Kolkata to issue the said demand draft of Rs.1 Lakh in favour of Zami Memorial Charitable Trust. He has further said that it is not known from whom the demand draft of Rs.1 Lakh had been received by Zami Memorial Charitable Trust. The Presenting Officer claims that there is no doubt about the facts stated by the Presenting Officer, but where is the connection between these facts and Mrs. L.R. Mithran? He has argued that if an unknown person makes a voluntary donation to a Trust, which is a common practice in India as many donors do not like to be identified, it is absurd to charge Mrs. L.R. Mithran for an unknown person having donated some money to the Trust. It is stated by the Investigating Officer in the case himself (Annexure A-1) that the said draft had been received by post in the Trust's office. The Presenting Officer states further that Regulation 19 of the Trust mandates that donations should be accepted only from identifiable sources. It is argued on behalf of the Charged Officer that there is no such stipulation in the regulation of the Trust. And in any case, Mrs. L.R. Mithran cannot be held responsible if the said Trust received a donation by post from an unidentified person.

It is contended that the Presenting Officer's allegation that Mrs. L.R. Mithran obtained a sum of Rs.1 Lakh by the said demand draft in the name of Zami Memorial Charitable Trust from an unknown and dubious source without intimation or permission from the competent authority, is absolutely baseless in the face of the fact that she never received any such demand draft nor was she even aware of it. The evidence on record clearly shows that the draft was received by post in the Trust's office and Mrs. L.R. Mithran had no knowledge about it". The above analysis would indicate that there is no direct evidence linking the donation of rupees one lakh with M/s Kitply or with Mrs. L.R. Mithran.

35. In relation to Charge No.1, the Presenting Officer has argued as under in his written brief:

(1) "Shri Allan Rokhan Mithran (aged 28 years approx.), the eldest son of Mrs. L.R. Mithran had been appointed to look after the export business of M/s. Kitply Industries

Limited vide appointment letter No.KIT/KAL/APP/97-98 dated 25.07.1997 (D-56). The contents of the letter are as under:-

“With reference to the discussion you had with us, we are pleased to intimate you that you have been selected to look after the coal business of the Company on the following terms and conditions”. And the conditions are that -

“He would be stationed at either Ghasnapara or Tura nearest Tawa of export location. After confirmation, he would be incharge of their coal business. He would get house rent, conveyance, telephone charges, etc...”

(2) He has claimed that the said fact of employment and further benefits like free housing, etc. are confirmed from documents such as - D-63, D-64, D-65, D-66 and statement of Shri Ricky Momin (PW-15).

(3) He has contended that it is also forthcoming from the aforesaid documents that close to the adjudication proceedings by Mrs. L.R. Mithran, the then Commissioner, in respect of M/s. Kitply Industries Limited, started export of coal through Gasuapara Land Custom Station under the jurisdiction of Shillong Excise Commissionerate and from 20.01.1997 to 30.06.1997, they had exported 2500 MT of coal to Bangladesh which is much less than the quantity usually exported by other parties hence such a venture is apparently not commensurate with the status of the Company. After joining of Shri Allan Mithran, no export of coal took place.

(4) It is further argued that the fact that the employment has been given to Shri Allan Mithran by M/s. Kityply Industries when Mrs. L.R. Mithran was the Commissioner of Central Excise having jurisdiction over the manufacturing unit of M/s. Kitply Industries and also the fact that she has dropped a huge chunk of demand against the unit only few months ago, indicate that the employment of Shri Allan was secured by Mrs. L.R. Mithran taking benefit of her good office.

(5) The Presenting Officer has pointed out that despite being fully aware of her obligations of taking prior sanction of the Government, before securing employment with a concern with whom she had official relations, Mrs.Mithran has failed to obtain prior sanction of the Government, and she also did not intimate the Department subsequently about the employment of her son, Shri Allan Mithran to the Department. Countering the above averments, the Charged Officer has contended that the Presenting Officer has tried his best to pursue the allegation that Mrs. L.R. Mithran procured the employment of her son, Mr. A.R. Mithran with M/s. Kitply Industries Limited without obtaining prior sanction of the Government. He has pointed out that it is abundantly clear as per the evidence referred to in Chapter III, testimonies of Mr.D.K. Thakuria, Manager of Kitply Industries Limited (Annexure 'A-4'), Mr. Shambhunath Jajodia, Director of M/s. Kitply Industries Limited (Annexure 'A-5'), Mr. P. Haridasan Nair, Executive (Legal) of M/s. Kitply Industries Limited (Annexure "A-6") and Mr. Anil Kumar Banka, Director of M/s. Kitply Industries Limited (Annexure "A-7"), the affidavit sworn by Mr. A.R. Mithran before the Judicial Magistrate First Class, Shillong (Annexure 'B-3') and

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also the oral testimony of Mr. A.R. Mithran before the Inquiring Authority on 10.08.200 (Annexure "C-3" of this Brief) that Mrs. L.R. Mithran had neither secured the employment of her son at any time with any Company nor was she even aware of her son's temporary assignment with M/s. Kitply Industries Limited at the relevant time."

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### Points for Determination

36. A reading of the Statement of Imputations suggests that the main allegation is that Mrs. L.R. Mithran showed undue favours to M/s Kitply Industries Limited, Kolkata while adjudicating a show cause notice for the alleged evasion of Rs.35,79,07,804. It has been alleged specifically that she passed the adjudication order "slicing down the evaded payment of Rs.35,79,07,804 to Rs.9,14,40,448" for a consideration. It has been further alleged :

(i) That she obtained employment for her son, Shri A.R. Mithran with M/s Kitply Industries Ltd. with whom she had official dealings, without obtaining prior permission of the competent authority;

(ii) That she accepted donations/gift by way of bank draft and also a Tata Mobile Vehicle in the name of Zami Memorial Charitable Trust created by her in the name of her later mother; and

(iii) That she accepted a donation of Rs.1 lakh in the name of Zami Memorial Charitable Trust from an unknown and dubious source through bank draft without informing or taking permission from the competent authority.

37. The cardinal point to be decided would be whether any undue favour was shown to M/s Kitply?

The first key issue would be whether slicing down of the allegedly evaded amount of duty from Rs.35,79,07,804 to Rs.9,14,40,448 (Rs.8,13,40,448 as duty + Rs.1,01,00,000 as penalties) amounts to showing an undue favour to M/s Kitply Industries Ltd. which would constitute an illegality or departmental misconduct. The Presenting Officer has also vehemently argued in his Written Brief that the "adjudication order sliced down the central excise duty to Rs.8,13,40,448/- to be paid by the said firm thereby causing a loss of Rs.27,65,67,356/- to the Government." The allegation of showing undue favour to M/s Kitply Industries Ltd. could be sustainable only if the appellate authorities had upheld the allegation of the evaded amount being Rs.35,79,07,804 to be true. Therefore, the orders passed by the Customs, Excise and Gold (Control) Appellate Authority (CEGAT) and the Hon'ble Supreme Court on the appeals filed against the adjudication order dated 5.12.96 passed by Mrs. L.R. Mithran would determine whether or not any undue favour was shown to M/s Kitply Industries Ltd. Although both these appellate authorities had passed orders in relation to this matter, there is no mention in the Charge Sheet about these orders. The Presenting Officer has

also not made a mention of the orders passed by the Hon'ble CEGAT as well as Hon'ble Supreme Court in this case.

Charge No.1 reads as under:

"Whereas Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she during the year 1996-97 obtained employment of her son, Shri A.R. Mithran with M/s Kitply Industries, Kolkata with whom she had official dealings, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of CCS Conduct Rules, 1964."

The department has to establish that Mrs. L.R. Mithran had asked M/s Kitply Industries Ltd. directly or indirectly, to employ her son Shri A.R. Mithran with the company or that she was aware of the fact that her son was employed with M/s Kitply Industries Ltd. during the relevant time. In a nutshell, this charge would be sustainable only if the evidence adduced by the department shows that she was aware that her son, who was about 25 years of age at the relevant time, had sought employment with M/s Kitply Industries Ltd. or that she had directly or indirectly asked M/s Kitply Industries Ltd. to employ her son with the company or had solicited the employment for her son in any other manner whatsoever.

Charge No.2 reads as under:

"Whereas said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she accepted donation/gift by way of bank draft, including Tata Mobile vehicle bearing Registration No. ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by Warren Tea Ltd., a sister concern of M/s Kitply Industries Ltd. with whom she had official dealings and thereby contravened rule 3(4) (i) and (iii) of CCS Conduct Rules, 1964".

This charge can be sustained by showing that any bank draft in the name of M/s Zami Memorial Charitable Trust was given to Mrs. L.R. Mithran and she accepted the same; or that Mrs. L.R. Mithran was aware of a donation by way of bank draft being given to Zami Memorial Charitable Trust. It has also to be shown that Mrs. L.R. Mithran had asked either M/s Warren Tea Ltd. or M/s Kitply Industries Ltd. for giving donations by way of bank draft or in cash to Zami Memorial Charitable Trust. It has also to be proved that Mrs. L.R. Mithran or any member of her family be benefitted or could have benefitted in any manner whatsoever by the said donations. The Department should also establish that Tata Mobile vehicle bearing Registration No. ML-05-B-2648 was accepted by Mrs. L.R. Mithran as a donation or gift to Zami Memorial Charitable Trust or that Mrs. L.R. Mithran was aware of the said Tata Mobile vehicle having been given as gift or donation to Zami Memorial Charitable Trust. There should be evidences to show that

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Mrs. L.R. Mithran had asked either M/s Warren Tea Ltd. or M/s Kitply Industries Ltd. or anyone else for donating the said vehicle or any other vehicle to Zami Memorial Charitable Trust. There should also be some material to show that Mrs. L.R. Mithran or any member of her family benefitted or could have benefitted from the donation of the said vehicle.

There is no doubt or dispute about the fact that Mrs. L.R. Mithran paid Rs.250 as registration fee for the Trust or that she was a Trustee of the said Trust. What is crucial is whether she or any member of her family was a beneficiary of the Trust or could have used any movable or immovable property of the Trust. There is also no doubt or dispute about the said donations having been given to the Trust. It appears that Mrs. L.R. Mithran was one of the persons who promoted this Trust for the welfare of women and children. Her association with the Trust is apparent on record. However, it is to be ascertained whether she secured the said donations or was even aware of these. It is to be shown whether she was involved in the day-to-day affairs of the Trust or not?

Charge No.3 reads as under:

"Whereas said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Charitable Trust (ZMCT) from unknown and dubious sources through bank draft without intimation/permission from the competent authority and thereby contravened Rule 18(3) and 3(1) of CCS Conduct Rules, 1964."

To sustain this charge, there should be evidence that Mrs. L.R. Mithran had received Bank draft of Rs.1 lakh in the name of Zami Memorial Charitable Trust from an unknown and dubious source. On this fact will lie the answer whether Mrs. L.R. Mithran was required to give intimation regarding receipt of this monery or required to take permission from the competent authority for the same.

### CONCLUSIONS

38. The main allegation in the the Charge Sheet is that Mrs. L.R. Mithran showed undue favours to M/s Kitply Industries Ltd., Kolkata while adjudicating a show cause notice for the alleged evasion of Rs. 35,79,07,804. It has been alleged specifically that she pased the adjudication order "slicing down the evadd payment of Rs. 35,79,07,804 to Rs. 9,14,40,448" for a consdieration. It has been further alleged :

- (i) That she obtained employment for her son, Shri A.R.Mithran with M/s Kitply Industries Limited with whom she had official dealings, without obtaining prior permission of the competent authority;
- (ii) That she accepted donations/gift by way of bank draft and also a Tata Mobile vehicle in the name of Zami Memorial Charitable Trust creatd by her in the name of her late mother; and

- (iii) That she accepted a donation of Rs. 1 lakh in the name of Zami Memorial Charitable Trust from a unknown and dubious source through bank draft without informing or taking permission from the competent authority.

1) The first key issue in this case is whether slicing down of the allegedly evaded amount of duty from Rs. 25,79,07,804 to Rs. 9,14,40,448 (Rs. 8,13,40,448 as duty + Rs.1,01,00,000 as penalties) amounts to showing an undue favour to M/s Kitply Industries Ltd. which would constitute an illegality or departmental misconduct. The Presenting Officer has also vehemently argued in his Written Brief that the "adjudication order sliced down the Central Excise duty to Rs. 8,13,40,448.00 to be paid by the said firm thereby causing a loss of Rs. 27,65,67,356 to the Government.

2) The Defence Assistant has drawn attention to the judgement dated 15.6.1999 passed by the Hon'ble Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT), Eastern Bench, Kolkata, which is appended as defence document and marked as Annexure "B-1". This judgement was passed on an appeal against the adjudication order of Mrs. L.R. Mithran, which is the subject matter of this case. While the Hon'ble CEGAT order was very much in existence when the Charge Sheet was issued to Mrs. L.R. Mithran, there is no mention of the said judgement of the Hon'ble CEGAT in the Charge Sheet. In the presenting Officer's Brief too, there is no mention of the Hon'ble CEGAT's judgement. The said judgement by the Hon'ble CEGAT gives a serious blow to the basis of allegations made in the Charge Sheet. While Mrs. L.R. Mithran had sliced down the amount of evasion from Rs. 25,79,07,804 to Rs. 8,13,40,448 (Rs. 8.13 crores approx.), the Hon'ble CEGAT sliced it down to a much smaller amount of Rs. 58,96 lakhs approx. (exclusive of penalty amounting to Rs. 10 lakhs). Thus, the duty liability of M/s Kitply Industries Limited determined by Hon'ble CEGAT is Rs. 58,96 lakhs as against Rs. 8.13 crores determined by Mrs. L.R. Mithran. This would go to show that neither any undue favour was shown to M/s Kitply Industries Limited nor Mrs. L.R. Mithran caused a revenue loss of Rs. 27,65,356 to the Government.

3) The Defence Assistant has also drawn attention to the Order dated 13.01.200 (Annexure "B-2") passed by the Hon'ble Supreme Court of India on the Civil Appeal filed by the Department against CEGAT's decision referred to above. It is by this order that the Hon'ble Supreme Court of India declined to interfere with the judgement of the Hon'ble CEGAT (which is referred above as Annexure "B-1") and dismissed the Civil Appeal filed by the Department. The orders passed by the Hon'ble CEGAT as well as Hon'ble Supreme Court take away the basis of the allegation of undue favour having been shown to M/s Kitply Industries Limited.

4) Coming to Charge No. 1, it has been alleged that Mrs. L.R. Mithran procured the employment for her son, Mr. A.R. Mithran with M/s Kitply Industries Limited but did not seek the prior permission of the competent authority. It has to be noted here that facts do not show the offer and acceptance of any regular job. The short term assignment has lasted just for three months. In view of its short duration, it appears to be more in the nature of casual engagement and not employment of any regular nature. The adjudication order in the case was passed on 5.12.1996, while the temporary assignment for which Mr.

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A.R. Mithran was engaged, started much later in July, 1997 as is evident from prosecution document numbered as D-56. Thus there is no immediate connectivity between the event of passing adjudication order and offer and acceptance of the casual engagement. In this connection, defence has relied on the affidavit shown by Mr. A.R. Mithran on 25.7.2000 before the Judicial Magistrate First Class, Shillong. A copy of the Affidavit is appended as Annexure "B-3" to this Defence Brief and has been adduced in evidence during hearing on 10.8.2002. This affidavit reads inter alia as under :

"(iv) That in order to further explore the potential of the coal business and export, I met a number of persons engaged or planning to get engaged in this business. This brought me in contact with Mr. S.N.Jagodia of M/s Kitply Industries Limited whose Company was interested in export of coal from Ghasuapara and Tura. Being convinced that I could promote their business at Tura or Ghasuapara in the field of coal export, they engaged me temporary for three moths on trial basis vide their letter dated 25.7.1997 and also provided me facilities like accommodaton, transport; electricity and phone, etc. on order to promote their business.

(iv) That I was living independently throughout and did not consider it necessary to inform my mother Mrs. L.R. Mithran about my work with M/s Kitply Industries Limited nor she helped me in any manner whatsoever getting me this work or engaged.

(v) That I left Tura in December, 1997 as the coal business could not take off profitably and it also ended my associaton with M/s Kitply Industries Limited.

(vi) That I am presently having my own business at Aizawl since 1998.

(vii) That I have been living independently on my own since attaining the age of majority, and have neither asked for any help from my parents in the matter of my employment or bisness, nor have I considered it necessary to keep them informed about my profession, occupation, employment of business."

5) Mr. A.R. Mithran himself appeared as a defence witness. His testimony is enclosed as Annexure Cd-3 to this Defence Brief. When asked as to how he got the temporary assignment with M/s Kitply Industries Limited for about 3 months, he stated that many of his friends were engaged in coal business and he also thought of joining the same business when he came in contact with Shri S.N. Jagodia of M/s Kitply Industries Limited. Shri A.R. Mithran stated that M/s Kitply Industries Limited were already in the business of coal export and were looking for someone to further their coal business at Ghasuapara at Tura. He stated that being convinced of his potential, M/s Kitply Industries Limited engaged him temporarily for 3 months on trial basis and also provided him the facilities like accommodaton, transportation, electricity, telephone; etc. in order to promote their business. He stated categorically that his mother, Mrs. L.R. Mithran did not help him in getting this assignment/engagement with M/s Kitply Industries Limkited. He stated further that he did not inform her mother about this. He stated that although he was temporarily staying in his mother's house in May, 1997, he was living

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independently. He stated further that since completing his graduation in 1993, he had been living independently and did not consider it necessary to inform his mother about his activities. He stated specifically that he did not inform about his activities. He stated specifically that he did not inform her about his assignment with M/s Kitply Industries Limited. This does not appear to be unnatural in the highly westernized atmosphere prevailing in North East.

6) If the contents of the affidavit of Shri A.R. Mithran and also his oral testimony are read in conjunction with the testimonies of prosecution witnesses, namely Shri R.P. Bose, Deputy Superintendent of Police, CBI (Annex. A-1), Shri D.K. Thakuria (Annex. A-4), Shri Shambhunath Jojodia (Annex. A-5), Shri P. Haridasan Nair (Annex. A-6) and Shri Anil Kr. Banka (Annex. A-7), it becomes clear that there is no evidence that Mrs. L.R. Mithran had either secured the employment of her son or was even aware of this fact at the relevant time. The charge is based only on an inference and there is no direct evidence to show that she had any role to play in the temporary engagement of Shri A.R. Mithran. M/s Kitply Industries have not testified to the truth of prosecution story nor Mr. A.R. Mithran has accepted that his mother Mrs. L.R. Mithran had any role to play in his temporary engagement with M/s Kitply Industries. Thus there is no direct evidence to support this charge.

7) The next charge in the Charge Sheet is that the Mrs. L.R. Mithran accepted donation/gift by way of bank draft, including Tata Mobile vehicle bearing Registraton No. ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mothr, which were paid by Warren Tea Limited, a sister concern of M/s Kitply Industries Limited with whom she had official dealings. To sustain this charge, there should be evidence to show that any Bank Draft in the name of M/s Zami Memorial Charitable Trust was given to Mrs. L.R. Mithran and she accepted the same; or that Mrs. L.R. Mithran was aware of a donation by way of Bank Draft being given to Zami Memorial Charitable Trust; or that Mrs. L.R. Mithran had asked either M/s Warren Tea Limited or M/s Kitply Industries Limited for giving donations by way or bank draft or in cash to Zami Memorial Charitable Trust. Similarly, there should be evidence to show that Tata Mobile Vehicle bearing Registraton No. No. ML-05-B-2648 was accepted by Mrs. L.R. Mithran as a donation or gift to Zami Memorial Charitable Trust, or that Mrs. L.R. Mithran was aware of the said Tata Mobile vehicle having been given as gift or donation to Zami Memorial Charitable Trust, or that Mrs. L.R. Mithran had asked either M/s Warren Tea Limited or M/s Kitply Industries or anyone else for donating the said vehicle or any other vehicle to Zami Memorial Charitable Trust.

8) There is no doubt or dispute about the fact that Mrs. L.R. Mithran paid Rs. 250 as registration fee for the Trust or that she was a Trustee of the said Trust. What is crucial is whether she or any member of her family was a beneficiary of the Trust or could have used any movable or imovable property of the Trust. There is also no doubt or dipute about the said donations having been given to the Trust. It is neither denied nor disputed that Mrs. L.R. Mithran was one of the persons who promoted this Trust for the welfare of women and children. The issue is whether she secured the said donations or was even aware of these. In a nutshell, if she had neither asked anyone for donating any money or

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vehicle to M/s Zami Memorial Charitable Trust nor was she aware of any such donation or gift, this charge has to fail.

9) The Affidavits shown by the following witnesses were submitted during the hearing held on 10.8.2002.

- (i) Mrs. Lalthan Zauvi before the Judicial Magistrate First Class, Aizawal on 7.8.2002 (Annexure "B-4")
- (ii) Mrs. L.Chungnungi before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-5")
- (iii) Mrs. Laldawni before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-6")
- (iv) Mrs. Lalniahchawngi before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-7")
- (v) Mrs. Lalremawii before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-8")
- (vi) Mrs. Darthahneiengi before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-9")
- (vii) Mrs. Hlipuii before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-10")
- (viii) Mrs. Estehr Lianchhawngi before the Judicial Magistrate First class, Shillong on 25.7.2002 (Annexure "B-11")
- (ix) Mrs. L.T. Muani before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-12")
- (x) Mrs. Van Lalruati before the Judicial Magistrate First Class, Aizawal on 7.8.2002 (Annexure "B-13")
- (xi) Mrs. Lilypuii before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-14")
- (xii) Ms. Biaksangi before the Judicial Magistrate First Class, Shillong on 25.7.2002 (Annexure "B-15")
- (xiii) Ms. Rose Mary Lalmangaihuali before the Judicial Magistrate First Class, Aizawal on 7.8.2002 (Annexure "B-16")
- (xiv) Mr. H.S. Kumbhat before the Judicial Magistrate First Class, Shillong on 22.7.2002 (Annexure "B-17")

10) Normally, bribes are accepted for personal benefits and enjoyment by the persons who continue to possess and control the fruits of illegal gratification. A perusal of the above mentioned Affidavits, copies of which are appended to this Defence Brief, establish that Mrs. L.R. Mithran had no part in the day-to-day affairs of the Trust and she had no exclusive or absolute control over the affairs of the Trust. These affidavits further establish.

- (i) that the trustee, Mrs. L.R. Mithran never handled any cash or the bank account of the Trust as she was not authorised to do so. Further, Mrs. L.R. Mithran did not draw any money from the account of the Trust, nor she used any of the properties of the Trust in any manner whatsoever;

- (ii) that all decisions relating to the Trust are taken by the Governing Body/Executive Committee, and not by Mrs. L.R. Mithran herself;
- (iii) that all the properties of the Trust were used for charitable work and not for any other purpose;
- (iv) that Mrs. L.R. Mithran is neither authorised to use any movable or immovable property of the Trust for the use of herself or any members of her family, nor has she ever used any such property for herself or any member of her family.
- (v) That no donation in cash or kind from any company, business house or organization or firm was received through her. Mrs. L.R. Mithran neither solicited any donations on behalf of the Trust nor she received any such donation on behalf of the Trust.
- (vi) That no information or intimation was given or required to be given to Mrs. L.R. Mithran on receipt of any donation by the Trust.

11) No evidence, documentary or oral has been adduced to counter the above averments. There is no direct evidence to show that Mrs. L.R. Mithran had any knowledge of these donations received by the Trust at the relevant time. The testimony of the Investigating Officer, Shri R.P. Bose (Annexure A-1) shows that the donations were received by the Trust by post and none of these payments were received personally by Mrs. L.R. Mithran. Testimony of Shri D.K. Thakuria, Manager, M/s Kitply Industries Limited (Annexure A-4) shows that Mrs. L.R. Mithran had not solicited or secured any donations for the Trust nor has she been aware of any such donations given to the Trust. The testimony of Shri Shambhunath Jajodia, Director of M/s Kitply Industries Limited (Annexure A-5), testimony of Shri P. Haridasan Nair, Executive (Legal) of M/s Kitply Industries Limited (Annexure A-6) and also the testimony of Shri Anil Kumar Bank, Director, M/s Kitply Industries Limited (Annexure A-7) in this regard also supports this view.

12) The testimonies tendered by other witnesses who appeared for the defence, namely, Mrs. Laldawni (Annexure "C-4"), Mrs. Lalpham Zauvi (Annexure "C-5"), Ms. Lalneichawngi (Annexure "C-6"), Ms. Darthahneing (Annexure "C-7"), Ms. L.T. Muani (Annexure "C-8"), Ms. Lawremawii (Annexure "C-9") and Mrs. L. Chungnungi (Annexure "C-10") are relevant in this context as all these witnesses have been associated with Zami Memorial Charitable Trust as office bearers or its members. In their oral testimony all of them have stated categorically that :

- (i) Mrs. L.R. Mithran did not have control over the decision of the Governing Body which took the final decisions;
- (ii) Mrs. L.R. Mithran was not authorised to handle cash, property or bank accounts of the Trust;
- (iii) The properties of the Trust were not used for any purpose other than the purposes for which the Trust had been created;
- (iv) Mrs. L.R. Mithran or any member of her family did not ever use any movable or immovable property of the Trust.
- (v) Mrs. L.R. Mithran did not solicit any donations in cash or any kind from any company, business house or organization for Zami Memorial Charitable Trust;

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- (vi) No donations in cash or kind from any company, business house or organization were received through Mrs. L.R.Mithran;
  - (vii) Mrs. L.R.Mithran was not involved in day-to-day affairs of the Trust as the same were looked after by the office bearers;
  - (viii) The control over the Trust was with the Governing Body and not with Mrs. L.R. Mithran.

13) There is no material, oral or documentary, on record to discredit the above evidence. There is no direct evidence to show that there is any connection between the creation of the Trust in the name of late mother of Mrs. L.R.Mithran and the adjudication of the show cause notice issued to M/s Kitply Industries Limited. The document relied upon in the Charge Sheet and numbered as D-8 itself shows that the Trust was brought into existence by 18 persons, all of whom had signed the said document relating to the formation of the Trust. It would not be reasonable to conclude that only because registration of the Trust and the adjudication of one particular case happened in the same quarter of the year, there is a direct relationship between the two events. It will be unreasonable to say that whatever was done by Mrs.L.R.Mithran when the adjudication order was passed, has a nexus only to the said adjudication order. Mrs. L.R.Mithran presumably would have passed other adjudication orders during her tenure in Shillong and there is no reason to see a nexus only between the registration of the Trust and the adjudication order passed in the case of M/s Kitply Industries Limited., and not between the Trust and any other adjudication order.

14) The Presenting Officer has placed reliance on the Memorandum of Association and the Rules and Regulations of the Trust to argue that Mrs. L.R. Mithran has permanent family ownership over the Trust and all powers were ultimately concentrated with Mrs.L.R.Mithran with a sole motive to utilize the Trust for the benefit of herself and for the members of her family. No doubt Mrs. L.R. Mithran is one of the trustees but she is not the "beneficiary". Secondly, the control over the Trust is with the Governing Body as per Para 25 of the Rules & Regulations of the Trust. The Governing Body of the Trust consists of the following :

- (i) President
- (ii) Vice-president
- (iii) General Secretatry
- (iv) Finance Secretary
- (v) Treasurer
- (vi) Assistant General Manager
- (vii) Advisors
- (viii) Executive Members
- (ix) Representatives
- (x) Trustees

15) Mrs. L.R. Mithran could at the most be a representative trustee in the Governing Body of the Trust. The documentary evidence referred to in Chapter VI i.e. affidavits sworn by Mrs.Lalthan Zauvi (Annexure "B-4"), Ms.L.Chungnungi (Annexure 'B-5'),

Ms. Laldawni (Annexure 'B-6), Ms. Lalneihchawngi (Annexure 'B-7'), Ms. Lalremawii (Annexure 'B-8'), Ms. Darthahnieng (Annexure 'B-9'), Ms. Himpuii (Annexure 'B-10'), Ms. Esther Lianchhawngi (Annexure 'B-11'), Ms. L.T.Kunai (Annexure 'B-12'), Mrs. Vanlalruati (Annexure 'B-13'), Ms. Lilypuii (Annexure 'B-14'), Ms. Biaksangi (Annexure 'B-15'), Ms. Rose Mary Lalhmangaaihzuai (Annexure 'B-16'), Shri H.S.Kumbhat (Annexure 'B-17), and oral evidence by Mrs. Laldawni (Annexure 'C-4'), Mrs. Lalpham Zauvi (Annexure 'C-5'), Ms. Lalneihchawngi (Annexure 'C-6'), Ms. Lawremawii (Annexure 'C-7'), Ms. L.T. Muani (Annexure 'C-8'), Ms. Lawremawii (Annexure 'C-9') and Mrs. L.Chungnungi (Annexure 'C-10') are relevant in this regard. Even the Department's own witness Smt. Latchanglian Sailow, whose testimony is at Annexure : A-14, had stated categorically that Mrs. L.R. Mithran had no powers to appoint the members of the Governing Body of the Trust nor had she any control over the Trust nor she benefitted in any manner from the Trust. In his Brief, the Presenting Officer pleads that "though the Governing Body had been exhibited sole authority of the Trust, but in practice, the trustees are all-in-all of the Trust." Nowhere has he mentioned a single piece of evidence which shows this "practice". The Presenting Officer's argument is not based on any documentary evidence about the "practice" in the Trust rather than the facts. All the oral and documentary evidence demolishes his argument. No doubt Mrs. L.R. Mithran is the representative of all trustees from which the Presenting Officer infers that "all powers originate from her and end with her." He further inferred that "the Trust is of Mrs. L.R. Mithran, the Charged Officer". There is enough documentary evidence as well as oral evidence to show that the Trust is controlled by the Governing Body in which the trustees are just one of the nine constituents.

16) The Presenting Officer has also alleged the existence of an "indirect route" for receipt of donations to the Trust. He has tried to link Shri S.P. Goenka of M/s Kitply Industries Limited with M/s Warren Tea Limited, and donations given by them with a particular adjudication order passed by Mrs. L.R. Mithran. The prosecution witnesses, namely, (i) Shri D.K. Thakuria (Annex. A-4), (ii) Shri Shambhunath Jojodia (Annex. A-5), (iii) Shri P. Haridasan Nair (Annex. A-6) and (iv) Shri Anil Kumar Banka (Annex. A-7) and defence witnesses, namely, Mrs. Laldawni (Annexure 'C-4'), Mrs. Lalpham Zauvi (Annex. C-5), Ms. Lalneihchawngi (Annexure C-6), Ms. Darthanhneing (Annexure C-7) and also Ms. L.T. Muani (Annexure C-8), Ms. Lawremawii (Annexure C-9) and Mrs. L. Chungnungi (Annexure C-10) have stated categorically that no donations were secured through Mrs. L.R. Mithran nor was she aware of these donations at the relevant time. It is not denied that M/s Kitply Industries Ltd. and M/s Warren Tea Ltd. gave donations to the Trust. However, the prosecution and the Presenting Officer have not put forward any direct evidence to establish that these donations were given at the instance of Mrs. L.R. Mithran or were connected to the adjudication order passed by Mrs. L.R. Mithran. Mere suspicions, however grave, do not prove the allegations made in the charge sheet, particularly when a large number of prosecution witnesses, and defence witnesses have stated categorically that there is no nexus between these donations and the adjudication order passed by Mrs. L.R. Mithran.

17) The Presenting Officer has alleged that Shri S.P. Goenka, Chairman of M/s Kitply Industries Ltd. came to know that there was going to be formed a Trust by Mrs. L.R.

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Mithran and he had to donate a vehicle to the Trust. According to him, there was a pre-planned strategy between Mrs. L.R. Mithran, Commissioner of Central Excise, Shillong and Shri S.P. Goenka, Chairman of M/s Kitply Industries Ltd. to receive benefit in exchange for a favour to be shown during an adjudication in the case of M/s Kitply Industries Ltd. However, the said Shri S.P. Goenka has not been produced as Prosecution Witness? No statement of Shri S.P. Goenka has not recorded and brought on record? The Department has not put up any evidence to prove that the donations were given at the instance of Mrs. L.R. Mithran or she was even aware of these donations.

18) So far as the Charge No.3 is concerned, it has been alleged that Mrs. L.R. Mithran, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Charitable Trust (ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority. However, Department has not cited any evidence to establish that Mrs. L.R. Mithran had received Bank Draft of Rs. 1 lakh in the name of Zami Memorial Charitable Trust from an unknown and dubious source.

19) Zami Memorial Charitable Trust received a donation of Rs.1 lakh by a demand draft for which the payment had been made in cash by an unidentified person. An unidentified man had asked Union Bank of India, Kolkata to issue the said demand draft of Rs.1 lakh in favour of Zami Memorial Charitable Trust. There is no doubt about these facts, but there is no connection between these facts and Mrs. L.R. Mithran. If an unknown person makes a voluntary donation to a Trust, which is a common practice in India as many donors do not like to be identified, it is not reasonable to charge Mrs.L.R.Mithran for this act without supporting it with documentary evidence. It is stated by the Investigating Officer in the case himself (Annexure A-1) that the said draft had been received by post in the Trust's office. The Presenting Officer has argued that Regulation 19 of the Trust mandates that donations should be accepted only from identifiable sources. There is no such stipulation in the Regulations of the Trust. And in any case, Mrs. L.R.Mithran can not be held responsible if the said Trust received a donation by post from an unidentified person.

20) The allegation that Mrs. L.R.Mithran obtained a sum of Rs. 1 lakh by the said demand draft in the name of Zami Memorial Charitable Trust from an unknown and dubious source without intimation or permission from the competent authority, is thus absolutely baseless in the face of the fact that she never received any such demand draft. The evidence on record clearly shows that the draft was received by post in the Trust's office and Mrs. L.R.Mithran had not received it.

21) The above analysis would show that all the three charges have not been proved beyond reasonable doubt. The Hon'ble Supreme Court has held on numerous occasions that mere suspicions, howsoever grave, cannot take the place of proof. Hon'ble Supreme Court's judgements in Ministry of Finance Vs S.R.Ramesh, 1993 (3) SSC 227; 1998 AIR (SC)853; Pawan Kumar Vs State of Haryana, 2001 AIR (SC) 1324; and Inderjit Singh Vs State of Punjab, 1995 (3) SCC 289 are relevant in this regard. In this case, while the

adduced documentary as well as oral evidence to establish beyond doubt that all the charges are false and baseless.

39. Thus the allegation that Mrs. L.R. Mithran, Charged Officer, showed undue favour by slicing down the amount of duty evasion by M/s. Kitply Industries Limited from Rs.35,79,07,804 to Rs.8,13,40,448, and thus caused a loss of Rs.27,65,67,356 to the Government, is not proved in view of the fact that the amount of Rs.8,13,40,448 as confirmed by Mrs. L.R. Mithran was further reduced to Rs.58,96,580 only (exclusive of a penalty of Rs.10 lacs) by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) vide its order dated 15.06.1999. An appeal filed by the Government against the CEGAT's decision was rejected by the Hon'ble Supreme Court vide its order dated 13.01.2000.

40. So far as Charge No.1 is concerned, there is considerable time gap between the passing of adjudication order dated 05.12.1996 by Mrs. L.R. Mithran and the temporary assignment of her son Mr. A.R. Mithran with M/s. Kitply Industries Limited which started not earlier than 25.07.1997 which is evident from letter No.KIT/CAL/APP/97-98 dated 25.07.1997 from M/s. Kitply Industries Limited to Mr. A.R. Mithran intimating the latter that he has been "selected to look after the coal business of the Company at Ghasuapara...". The affidavit sworn by Mr. A.R. Mithran shows that he was 25 years of age at the relevant time and was not dependent on his mother. According to him, his mother neither helped him in getting this assignment nor was she aware of it. He maintained the same during his examination as a defence witness. The prosecution witnesses themselves, who were from M/s. Kitply Industries Limited, have stated that Mrs. L.R. Mithran did not solicit the employment of her son with them. The only fact which may raise some amount of suspicion in the matter is that Mr. A.R. Mithran was staying in his mother's house at the time when the said letter dated 25.07.1997 was received by him. But this fact is not sufficient by itself to establish that Mrs. L.R. Mithran had either secured the employment of her son with M/s. Kitply Industries Limited or she was aware of it. It has been held by the Hon'ble Supreme Court in **Ramesh Kumar Vs. State of Punjab, AIR 1994 SC 945**, that every circumstance has to be established by clinching evidence and not by mere conjectures. In the case of **Ministry of Finance Vs. S.B. Ramesh, (1998) 3 SCC 227 : 1998 AIR (SC) 853** also, the Hon'ble Supreme Court held that even though the degree of proof required in disciplinary proceedings is not of that standard required in criminal case but the suspicion cannot be substituted for proof even in departmental inquiry proceedings.

41. Coming to Charge No.2, while the needle of suspicion points to Mrs. L.R. Mithran, the documentary and oral evidence does not go as far as to establish beyond a reasonable doubt that she was guilty of the alleged misconduct. In **Jaharlal Das Vs. State of Orissa, AIR 1991 SC 1388**, the Hon'ble Supreme Court held that in cases depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of proof. Therefore, various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. In the instant case, Shri S.P. Goenka of M/s. Kitply Industries Limited is a vital link in the chain of evidence as

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he has been referred to as the key person who asked M/s. Warren Tea Limited to donate money and vehicle to the Zami Memorial Charitable Trust. The chain of circumstantial evidence appears to break at Shri S.P. Goenka as he has neither been called as a prosecution witness nor his statement recorded at any time before any authority has been brought on record. No reason has been adduced in the Charge Sheet or by the Presenting Officer as to why the said Shri S.P. Goenka has not been called as a witness to prove or explain the sequence of facts underlined in the Charge Sheet. His unexplained absence in the chain of prosecution evidence raises doubts about the existence of acts alleged in the Charge Sheet to be attributable to him either directly or in collusion with Mrs. L.R. Mithran.

42. Four of the prosecution witnesses namely, Shri D.K. Thakuria of M/s. Kitply Industries Limited, Shri Sambhunath Jajodia, Director of M/s. Kitply Industries Limited, Shri P. Haridasan Nair and also Shri Anil Kumar Banka of M/s. Kitply Industries have stated in the course of their cross-examination that the donations to Zami Memorial Charitable Trust were neither solicited by Mrs. L.R. Mithran nor were these given to her. Affidavits sworn before the Judicial Magistrate by 13 of the Office Bearers or Members of Zami Memorial Charitable Trust, adduced in evidence by the Defence, also testify to the fact that Mrs. L.R. Mithran was not instrumental in any way in getting these donations. It has been further affirmed in these affidavits that Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust and all the decisions of the Trust were taken by the Governing Body and not by Mrs. L.R. Mithran. The defence witnesses appearing before the Inquiring Authority have also affirmed the same.

43. It has not been proved beyond reasonable doubt as to how Mrs. L.R. Mithran or any member of family benefitted or could have benefitted from any donation given to Zami Memorial Charitable Trust. As per the Rules and Regulations of the said Trust, she or her family could not be the beneficiary of the Trust. The documentary as well as oral evidence adduced by the Charged Officer proves that the cash and movable or immovable properties of the Trust have never been used for the benefit of Mrs. L.R. Mithran or any member of her family. On the other hand, the affidavit sworn by the first President of the Trust and adduced in evidence shows that Mrs. L.R. Mithran donated her own land with present worth Rs.25 lakhs to the Trust for setting up a free de-addiction centre.

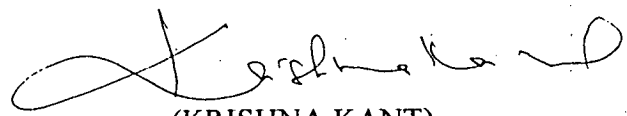
44. It is not proved beyond surmises and conjectures that Mrs. L.R. Mithran, Charged Officer, was aware of the donation of money and vehicle by M/s. Warren Tea Limited to the Zami Memorial Charitable Trust although the possibility of her being aware of these donations cannot be ruled out. As pointed out earlier, the Hon'ble Supreme Court has held in **Ministry of Finance and Another Vs. S.B. Ramesh, (1998) 3 SCC 227: AIR 1998 SC 853**, that suspicion, howsoever strong, cannot be substituted for proof even in a departmental disciplinary proceeding.

45. In view of the above, Charge No.2 is also not proved.

46. Coming to Charge No.3, all the documentary evidence as well as oral evidence, including the Investigating Officer's replies to questions put to him during his cross-examination, establish beyond any doubt that the draft of Rs.1 lac from an unidentified person and in favour of Zami Memorial Charitable Trust was received in the Trust's office by post. Therefore, the said money cannot be said to have been received by Mrs. L.R. Mithran which would have made it obligatory for her to seek prior approval or give intimation to the Government. No link between this donation and Mrs. L.R. Mithran has been established after taking into account the documentary and oral evidence by defence witnesses. Therefore, Charge No.3 is also not proved.

CONCLUSION

44. The allegations contained in Statement of Imputation of Misconduct contained in the Charge Sheet have not been established for the reasons discussed above. The charges, namely Article of Charge No.1, Article of Charge No.2 and Article of Charge No.3 as contained in Memorandum F.No. C-14011/39/2001-Ad.V dated 13.12.2001 are not proved against Mrs. L.R. Mithran.

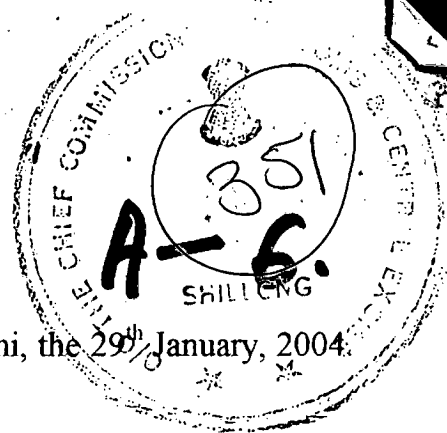


(KRISHNA KANT)  
INQUIRING AUTHORITY  
&  
CHIEF COMMISSIONER OF CUSTOMS (DZ)  
NEW DELHI-110037.

*Handwritten: Drafted true copy*  
*Handwritten: 19-3-07*  
*Handwritten: (R. K. Sarkar)*  
*Handwritten: Superintendent (Tech-I)*  
*Handwritten: Central Excise : : Ghy. Division*

F.No.C.14011/39/2001-Ad.V  
Government of India  
Ministry of Finance  
Department of Revenue

New Delhi, the 29<sup>th</sup> January, 2004.



**SHOW CAUSE NOTICE**

WHEREAS disciplinary proceedings against Smt L.R.Mithran, Commissioner of Customs and Central Excise, Shillong, were initiated vide Memo of even number dated 13.12.2001, for the charges as stated therein.

AND WHEREAS on denial of charges an open inquiry was conducted. Vide his report dated 28.8.2002, Inquiry Officer has held all the three Articles of charges against Smt. L.R. Mithran as "not proved". A copy of the IO's report is enclosed. A copy of CVC's advice is also enclosed.

✓ AND WHEREAS The President of India (Disciplinary Authority) after carefully considering the findings of the I.O. and related material has decided to disagree with the same for the reasons as under:-

As regards Article-I of the charge, the IO has concluded that the charge is based on an inference and there is no direct evidence to show that the C.O. had any role to play in temporary engagement of her son with M/s. Kitply Industries. The said findings of the IO does not appear to be in conformity with provisions of Rule 4(2)(ii) which says, "A Govt. servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any company or firm, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that company or firm". Therefore, it was incumbent upon Mrs. Mithran to intimate to the Department about employment of her son with M/s. Kitply Industries Ltd. Kolkata with whom she had official dealings, which she failed to do so. It is immaterial whether the employment was temporary or permanent as the Rule 4 ibid does not make any difference in permanent and temporary employment. She has also not intimated to the Department that her son was independent since he attained majority as required under Rule 15(3) of CCS(Conduct) Rules, 1964. Hence, findings of the IO in respect of Article-I of the charge are not tenable.

As regards Article II and III of the charge, the IO has held that evidence is necessary which can confirm either the CO's demand and/or acceptance or the knowledge/awareness of the above donations in addition to the point as to who was the beneficiary ultimately. It is observed that the findings of the IO appears to be deficient because lapses on the part of Mrs. Mithran on this account vis-a-vis conduct rules involved have not been analyzed by the IO. It is a fact that the Trust was created by her during the pendency of the adjudication proceedings. She was one of the main promoters of the Trust and she herself had deposited the registration fees, which indicate that she has been actively associated with

the activities of the Trust. Therefore, donation/gift given to the Trust were well within her knowledge. Moreover, she has not intimated to the Department about forming of a charitable Trust as required under Rule 15(2)(d) of the CCS(Conduct) Rules, 1964. Therefore, it appears that she has concealed from the Department her participation in the activities of the Trust which inter-alia included accepting donations/gifts by way of bank drafts including Tata Mobile vehicle given to Zami Memorial Trust which were paid by M/s Warren Tea Ltd., a sister concern of M/s KIL, with whom she had official dealings. This act of her concealment goes to prove her failure to maintain absolute integrity and indulging actions of unbecoming of a Govt. servant. Thus, findings of IO in respect of Article II and III of the charge are also not tenable.

NOW, THEREFORE, the President of India has disagreed with the findings of the I.O. for the reasons given above. Smt. L.R. Mithran, Commissioner (Retd), is hereby directed to show cause as to why the said findings of the I.O. should not be disagreed with and a penalty of suitable cut in her monthly pension be imposed on her. Smt. Mithran is directed to furnish her submissions, if any, within a period of 15 days from of the date receipt of the Show Cause Notice. In case, no reply is received within the stipulated period it will be presumed that she has nothing to say and the matter will be decided without her representation.

(By order and in the name of the President ).

(Rajiv Ravi)

Deputy Secretary to the Govt. of India

To

✓  
Smt. L.R. Mithran,  
Commissioner of Customs & Central Excise (Retd)  
**(Through: The Chief Commissioner of Customs and Central Excise,  
Shillong.)**

Encls: As above

By Regd. AD

From :

Mrs. L. R. Mithran,  
Commissioner of Customs &  
Central Excise (Retd.),  
Near Mizo High School,  
Nongrim Hills,  
Shillong (Meghalaya).

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A-7.

To  
Shri Rajiv Raj K. Sarkar  
Deputy Secretary (Tech.)  
Ad.V Section, Chy. Division  
Central Board of Excise & Customs,  
Department of Revenue,  
North Block,  
NEW DELHI - 110 001.

Sub. : **Disciplinary proceedings against Smt. L. R. Mithran,  
Commissioner of Central Excise (Retired), Shilling.**

Sir,

Kindly refer to your Show Cause Notice No. C.14011/39/2001 Ad.V dated 29.01.2004 on the above subject.

2. The Inquiry Officer has held all the charges against me as NOT PROVED but still I have unfortunately been asked to show cause as to why the Disciplinary Authority should not disagree with the finding of the Inquiry Officer. My submissions in respect of each Article of Charge are as under :

3. Article I of the Charge

Article I of the Charge reads as under :

"3.1 Whereas Mrs. L.R. Mithran, IRS, while functioning as Commissioner, Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she during the year 1996-97 obtained employment for her son, Shri A.R. Mithran with M/s. Kitply Industries Limited, Kolkata with whom she had official dealings, without obtaining prior permission of the competent authority and thereby contravened Rule 4 of C.C.S. Conduct Rules, 1964."

4. Defence of the Charged Officer to Article I :

The Charged Officer had pleaded that she had neither secured the employment of her son Shri A.R. Mithran with M/s. Kitply Industries nor was she even aware of this employment during the relevant time.

5. Evidence in support of the Defence for Article I :

The Charged Officer adduced detailed evidence before the Inquiry Officer to establish that her son Mr. A.R. Mithran had neither informed her about his

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assignment with M/s. Kitply Industries nor she had any other means to know about it.

The Inquiry Officer has gone into all the evidence so adduced by the Charged Officer in her defence and observed as under :

"In this connection, defence has relied on the affidavit shown by Mr. A.R. Mithran on 20.7.2000 before the Judicial Magistrate First Class, Shillong. A copy of the Affidavit is appended as Annexure "B-3" to this Defence Brief and has been adduced in evidence during hearing on 10.8.2002. This affidavit reads inter alia as under :

"(iv) That in order to further explore the potential of the coal business and export, I met a number of persons engaged or planning to get engaged in this business. This brought me in contact with Mr. S.N. Jagodia of M/s. Kitply Industries Limited whose Company was interested in export of coal from Ghasuapara and Tura. Being convinced that I could promote their business at Tura or Ghasuapara in the field of coal export, they engaged me temporarily for three months on trial basis vide their letter dated 25.7.1997 and also provided me facilities like accommodation, transport, electricity and phone, etc. in order to promote their business.

(iv) That I was living independently throughout and did not consider it necessary to inform my mother Mrs. L.R. Mithran about my work with M/s. Kitply Industries Limited nor she helped me in any manner whatsoever getting me this work or engaged.

(v) That I left Tura in December, 1997 as the coal business could not take off profitably and it also ended my association with M/s. Kitply Industries Limited.

(vi) That I am presently having my own business at Aizawl since 1998.

(vii) That I have been living independently on my own since attaining the age of majority, and have neither asked for any help from my parents in the matter of my employment or business, nor have I considered it necessary to keep them informed about my profession, occupation, employment or business."

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5) Mr. A.R. Mithran himself appeared as a defence witness. His testimony is enclosed as Annexure Cd-3 to this Defence Brief. When asked as to how he got the temporary assignment with M/s. Kitply Industries Limited for about 3 months, he stated that many of his friends were engaged in coal business and he also thought of joining the same business when he came in contact with Shri S.N. Jagodia of M/s Kitply Industries Limited. Shri A.R. Mithran stated that M/s Kitply Industries Limited were already in the business of coal export and were looking for someone to further their coal business at Ghasuapara at Tura. He stated that being convinced of his potential, M/s Kitply Industries Limited engaged him temporarily for 3 months on trial basis and also provided him the facilities like accommodation, transportation, electricity, telephone, etc. in order to promote their business. He stated categorically that his mother, Mrs. L.R. Mithran did not help him in getting this assignment/engagement with M/s Kitply Industries Limited. He stated further that he did not inform his mother about this. He stated that although he was temporarily staying in his mother's house in May, 1997, he was living independently. He stated further that since completing his graduation in 1993, he had been living independently and did not consider it necessary to inform his mother about his activities. He stated specifically that he did not inform about his assignment with M/s Kitply Industries Limited. This does not appear to be unnatural in the highly westernized atmosphere prevailing in North East."

(Emphasis supplied)

6. Inquiry Officer's conclusions on Article I :

After taking into account all the evidence on record, Inquiry Officer has concluded as under :

"6) If the contents of the affidavit of Shri A.R. Mithran and also his oral testimony are read in conjunction with the testimonies of prosecution witnesses, namely, Shri R.P. Bose, Deputy Superintendent of Police, CBI (Annex. A-1), Shri D.K. Thakuria (Annex. A-4), Shri Shambhunath Jojodia (Annex. A-5), Shri P. Haridasan Nair (Annex. A-6) and Shri Anil Kr. Banka (Annex. A-7), it becomes clear that there is no evidence that Mrs. L.R. Mithran had either secured the employment of her son or was even aware of this fact at the relevant time. The charge is based only on an inference and there is no direct evidence to show that she had any role to play in the temporary engagement of Shri A.R. Mithran. M/s Kitply Industries have not testified

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to the truth of prosecution story nor Mr. A.R. Mithran has accepted that his mother Mrs. L.R. Mithran had any role to play in his temporary engagement with M/s. Kitply Industries. Thus there is no direct evidence to support this charge."

(Emphasis supplied)

7. Reasons cited in the instant Show Cause Notice for the disagreement of Disciplinary Authority with the Inquiry Officer's findings on Article I of the Charge :

The findings of the Inquiry Officer are proposed to be disagreed to for the following reasons :

(i) The said findings of the IO does not appear to be in conformity with provisions of Rule 4(2)(ii) which says, "A Govt. servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any company or firm, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that company or firm". Therefore, it was incumbent upon Mrs. Mithran to intimate to the Department about employment of her son with M/s. Kitply Industries Ltd., Kolkata with whom she had official dealings, which she failed to do so. It is immaterial whether the employment was temporary or permanent as the Rule 4 ibid does not make any difference in permanent and temporary employment.

(ii) She has also not intimated to the Department that her son was independent since he attained majority as required under Rule 15(3) of CCS (Conduct) Rules, 1994. Hence, findings of the IO in respect of Article-I of the Charge are not tenable.

8. My submissions in respect of the reasons mentioned above for disagreeing with the Inquiry Officers' findings in respect of Article I of the Charge :

I submit as under :

a) I have established beyond a reasonable doubt by adducing abundant evidence detailed in para 5 above (which is also accepted and relied upon by the Inquiry Officer) that my son never made me aware of his assignment with M/s. Kitply Industries. **I agree that it is immaterial whether the employment was temporary or permanent. However, I emphasize that as I was not aware of this employment, irrespective of its being permanent or temporary, it could not have been possible for me to intimate about such employment to the prescribed authority. The disciplinary authority cannot assume, contrary to all evidence on record and also the findings of the Inquiry Officer, that I was aware of such employment.**

I cannot be punished for the supposed lapse of the part of my grown-up son in keeping me informed about all his activities. He has stated on oath in the affidavit as well as before the Inquiry Officer that he never informed me about his employment with M/s. Kitply Industries. I could not have informed the Department without having been aware myself about it.

b) Regarding the reason stated in para 7(ii) above, I have only to say that **Rule 15(3) of CCS (Conduct) Rules, 1964 has been misquoted** to allege that I have also not intimated to the Department that my son was independent since he attained majority. **There is no requirement under the said Rule to inform the Department as and when an employee's child attains majority and becomes independent.** I reproduce below the Rule 15(3) of the said Rules :

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**"(3) Every Government shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency."**

Even a plain reading of this rule makes it abundantly clear that there is no requirement under this Rule to inform the Department when an employee's child attains majority and becomes independent, so long as he does not engage in trade or business or owns or manages an agency which is admittedly not the situation in the present case.

c) In view of the above, I humbly submit that the Inquiry Officer's report is sought to be disagreed upon on frivolous grounds.

9. Article II and Article III of the Charge :

Article II reads as under :

"3.2 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she accepted donation/gift by way of bank draft, including Tata Mobile vehicle bearing Registration No. ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s. Warren Tea Limited, a sister concern of M/s. Kitply Industries Limited with whom she had official dealings and thereby contravened rule 3(4)(i) and (iii) of C.C.S. Conduct Rules, 1964."

Article III reads as under :

"3.3 The said Mrs. L.R. Mithran, IRS, while acting as Commissioner, Central Excise, Shillong failed to maintain absolute integrity by obtaining a sum of Rs.1 lakh in the name of Zami Memorial Charitable Trust (ZMCT) from unknown and dubious source through bank draft without intimation/permission from the competent authority and thereby contravened rule 18(3) and 3(1) of C.C.S. Conduct Rules, 1964."

10. Defence of the Charged Officer to Article II and Article III :

The Charged Officer had vehemently argued in her defence, and also proved it by evidence of no less than 14 witnesses who appeared in person before the Inquiry Officer, that she did not deal with the day-to-day affairs of the Zami Memorial Charitable Trust and hence had no knowledge about any donation, whether in cash or in kind, to this Trust. The Charged Officer had proved beyond any reasonable doubt that no donation was made to her or at her instance, nor was she aware at any time about any such donation.

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11. Evidence in support of the Defence for Article II and Article III :

(a) The Charged Officer filed fourteen affidavits duly sworn before the Judicial Magistrate by the following persons to establish that she neither had knowledge about any donation/gift to the Trust nor was in any way instrumental in procuring it :

- i. Mrs. Lthan Zauvi before the Judicial Magistrate First Class, Aizawal on 07.08.2002
- ii. Mrs. L. Chungnungi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- iii. Mrs. Laldawni before the Judicial Magistrate First Class, Shillong on 25.07.2002
- iv. Mrs. Lalnichchawngi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- v. Mrs. Lalremawii before the Judicial Magistrate First Class, Shillong on 25.07.2002
- vi. Mrs. Darthahnengi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- vii. Mrs. Hlimpuji before the Judicial Magistrate First Class, Shillong on 25.07.2002
- viii. Mrs. Esther Lianchhawngi before the Judicial Magistrate First Class, Shillong on 25.07.2007
- ix. Mrs. L.T. Muani before the Judicial Magistrate First Class, Shillong on 25.07.2002
- x. Mrs. Van Lalruati before the Judicial Magistrate First Class, Aizawal on 07.08.2002
- xi. Mrs. Lilypuji before the Judicial Magistrate First Class, Shillong on 25.07.2002
- xii. Ms. Biaksangi before the Judicial Magistrate First Class, Shillong on 25.07.2002
- xiii. Ms. Rose Mary Lalhmangaihzuai before the Judicial Magistrate First Class, Aizawal on 07.08.2002
- xiv. Mr. H.S. Kumbhat before the Judicial Magistrate First Class, Shillong on 22.07.2002

(b) Seven defence witnesses who appeared from the defence were Mrs. Laldawni (Annexure "C-4"), Mrs. Lalpham Zauvi (Annexure "C-5"), Ms. Lalneihchawngi (Annexure "C-6"), Ms. Darthahnengi (Annexure "C-7"), Ms. L.T. Muani (Annexure "C-8"), Ms. Lalremawii (Annexure "C-9") and Mrs. L. Chungnungi (Annexure "C-10"). All these witnesses have been associated with Zami Memorial Charitable Trust as office bearers or as its members. In their oral testimony before the Inquiring Authority, all of them stated categorically that :-

- (i) Mrs. L.R. Mithran did not have control over the decision of the Governing Body which took the final decisions;
- (ii) Mrs. L.R. Mithran was not authorized to handle cash, property or bank accounts of the Trust;
- (iii) The properties of the Trust were not used for any purpose other than the purposes for which the Trust had been created;
- (iv) Mrs. L.R. Mithran or any member of her family did not ever use any movable or immovable property of the Trust;
- (v) Mrs. L.R. Mithran did not solicit any donations in cash or any kind from any company, business house or organization for Zami Memorial Charitable Trust;
- (vi) No donations in cash or kind from any company, business house or organization were received through Mrs. L.R. Mithran.

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- (vii) Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust as the same were looked after by the office bearers;
  - (viii) The control over the Trust was with the Governing Body and not with Mrs. L.R. Mithran.

12. Inquiry Officer's findings in respect of Article II and Article III of the Charge :

The finding of the Inquiry Officer in respect of Charge II and III are :

"41. Coming to Charge No.2, while the needle of suspicion points to Mrs. L.R. Mithran, the documentary and oral evidence does not go as far as to establish beyond a reasonable doubt that she was guilty of the alleged misconduct. In **Jaharlal Das Vs. State of Orissa, AIR 1991 SC 1388**, the Hon'ble Supreme Court held that in cases depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of proof. Therefore, various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule-out a reasonable likelihood of the innocence of the accused. In the instant cases, Shri S.P. Goenka of M/s. Kitply Industries Limited is a vital link in the chain of evidence as he has been referred to as the key person who asked M/s. Warren Tea Limited to donate money and vehicle to the Zami Memorial Charitable Trust. The chain of circumstantial evidence appears to break at Shri S.P. Goenka as he has neither been called as a prosecution witness nor his statement recorded at any time before any authority has been brought on record. No reason has been adduced in the Charge Sheet or by the Presenting Officer as to why the said Shri S.P. Goenka has not been called as a witness to prove or explain the sequence of facts underlined in the Charge Sheet. His unexplained absence in the chain of prosecution evidence raises doubts about the existence of acts alleged in the Charge Sheet to be attributable to him either directly or in collusion with Mrs. L.R. Mithran.

42. Four of the prosecution witnesses, namely, Shri D.K. Thakuria of M/s. Kitply Industries Limited, Shri Sambhunath Jajodia, Director of M/s. Kitply Industries Limited, Shri P. Haridasan Nair and also Shri Anil Kumar Banka of M/s. Kitply Industries have stated in the course of their cross-examination that the donations to Zami Memorial Charitable Trust were neither solicited by Mrs. L.R. Mithran nor were these given to her. Affidavits sworn before the Judicial Magistrate by 13 of the Office Bearers or Members of Zami Memorial Charitable Trust, adduced in evidence by the Defence also testify to the fact that Mrs. L.R. Mithran was not instrumental in any way in getting these donations. It has been further affirmed in these affidavits that Mrs. L.R. Mithran was not involved in day-to-day affairs of the Trust and all the decisions of the Trust were taken by the Governing Body and not by Mrs. L.R. Mithran. The defence witnesses appearing before the Inquiring Authority have also affirmed the same.

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43. It has not been proved beyond reasonable doubt as to how Mrs. L.R. Mithran or any member of family benefitted or could have benefitted from any donation given to Zami Memorial Charitable Trust. As per the Rules and Regulations of the said Trust, she or her family could not be the beneficiary of the Trust. The documentary as well as oral evidence adduced by the Charged Officer proves that the cash and movable or immovable properties of the Trust have never been used for the benefit of Mrs. L.R. Mithran or any member of her family. On the other hand, the affidavit sworn by the first President of the Trust and adduced in evidence shows that Mrs. L.R. Mithran donated her own land with present worth Rs.25 lakhs to the Trust for setting up a free de-addiction centre.

44. It is not proved beyond surmises and conjectures that Mrs. L.R. Mithran, Charged Officer, was aware of the donation of money and vehicle by M/s. Warren Tea Limited to the Zami Memorial Charitable Trust although the possibility of her being aware of these donations cannot be ruled out. As pointed out earlier, the Hon'ble Supreme Court has held in **Ministry of Finance and Another Vs. S.B. Ramesh, (1998) 3 SCC 227 : AIR 1998 SC 853**, that suspicion, howsoever strong, cannot be substituted for proof even in a departmental disciplinary proceedings.

45. In view of the above, Charge No.2 is also not proved.

46. Coming to Charge No. 3 all the documentary evidence as well as oral evidence, including the Investigating Officer's replies to questions put to him during his cross-examination, establish beyond any doubt that the draft of Rs.1 lac from an unidentified person and in favour of Zami Memorial Charitable Trust was received in the Trust's office by post. Therefore, the said money cannot be said to have been received by Mrs. L.R. Mithran which would have made it obligatory for her to seek prior approval or give intimation to the Government. No link between this donation and Mrs. L.R. Mithran has been established after taking into account the documentary and oral evidence by defence witnesses. Therefore, Charge No.3 is also not proved."

13. Reasons cited in the instant Show Cause Notice for Disciplinary Authority's disagreement with the Inquiry Officer's findings in respect of Article II and Article III of the Charges :

The Show Cause Notice cites the following reasons for disagreement with IO's report :

"As regards Article II and III of the Charge, the IO has held that evidence is necessary which can confirm either the CO's demand and/or acceptance or the knowledge/awareness of the above donations in addition to the point as to who was the beneficiary ultimately. It is observed that the findings of the IO appears to be deficient because lapses on the part of Mrs. Mithran on this account vis-à-vis

conduct rules involved have not been analyzed by the IO. It is a fact that the Trust was created by her during the pendency of the adjudication proceedings. She was one of the main promoters of the Trust and she herself had deposited the registration fees, which indicate that she has been actively associated with accepting donations/gifts by way of bank drafts including Tata Mobile vehicle given to Zami Memorial Trust which were paid by M/s Warren Tea Ltd., a sister concern of M/s KIL, with whom she had official dealings. The act of her concealment goes to prove her failure to maintain absolute integrity and indulging in actions unbecoming of a Govt. servant. Thus, findings of IO in respect of Article II and III of the charge are also not tenable."

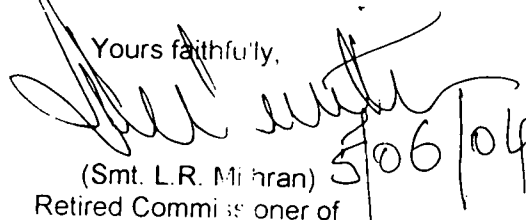
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14. My submissions on the above reasons in respect of Article II and Article III :

(i) The Disciplinary Authority proposes to disagree wrongly with the IO on the grounds that the findings of IO appear to be deficient because the lapses on the part of Mrs. Mithran in relation to donation vis-à-vis Conduct Rules involved have not been analysed. It is humbly submitted that all the evidence, documentary as well as oral, establishes beyond a reasonable doubt that **I was not aware of any such donation or gift received by the said Trust**. It would be contrary to law and principles of justice to attribute to me the knowledge about such donation or gift, in spite of undisputable evidence of record. I have proved beyond a reasonable doubt that though I was one of the main promoters of the Trust and had myself deposited the registration fee, I was not dealing with the day-to-day affairs of the Trust and had no means to know about the said donations. There is no evidence at all on record to establish that any such donation was at my instance or I was even aware of any such donation. I cannot be accused of having concealed any fact about which I was not aware at all. Such grave charges as have been levelled against me need to be supported by evidence and not by suspicions. Leave aside the huge evidence adduced by me to establish that I was not dealing with day-to-day affairs of the Trust and was not made aware by any office bearer or member of the Trust about any donation or gift, even the departmental witnesses have not supported these Charges. The whole case against me is built on presumptions and assumptions. Relying on the judgement of the Hon'ble Supreme Court in **Ministry of Finance vs. S.B. Ramesh (1998) 3 SCC 227 : AIR 1998 SC 853**, the Inquiry Officer has rightly held that suspicion, howsoever strong, cannot be substituted for proof even in departmental disciplinary proceedings.

16. I humbly submit and pray that I am not guilty of any misconduct, and the Inquiry Officer's findings should not be disagreed with on frivolous grounds unsubstantiated by any evidence. I have retired from service long back and should be allowed to live my retired life peacefully. I may be heard in person if any decision contrary to the findings of Inquiry Officer is proposed to be taken. In the end, I once again request that the disciplinary proceedings may be closed as the Inquiry Officer has categorically held the charges to be 'NOT PROVED'.

Yours faithfully,

  
(Smt. L.R. Mithran)  
Retired Commissioner of  
Central Excise & Hillong.

Date : 05/06/2004.

Sl. No. 55 (FR)

CONFIDENTIAL

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A-8.

*Attended  
full copy*  
*15/03/07*  
(R. K. Sarkar)  
Superintendent (Tech-I)  
Central Excise : : Ghy. Division



ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SMT. L.R. MITHRAN, COMMISSIONER

MINISTRY OF FINANCE

Gram : UNISERCOM

Telex : 031-62677  
Fax : 011-3385345

**CONFIDENTIAL**  
**F.3/268/2005-SI**

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**संघ लोक सेवा आयोग**

धौलपुर हाउस, शाहजहाँ रोड

**UNION PUBLIC SERVICE COMMISSION**

(SANGH LOK SEVA AYOGE)

DHOLPUR HOUSE, SHAHJAHAN ROAD

सेवा में  
To

नई दिल्ली-110011  
New Delhi-110011

Dt. 17.1.2006

The Secretary to the Govt of India,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

(Attn:- Shri S.P. Roy, Under Secretary).

Subject:- Disciplinary proceedings against Smt. L. R. Mithran, Commissioner of Central Excise, Shillong (Retd.).

Sir,

I am directed to refer to your letter No.14011/39/2001.AD.V-3416 dated 17<sup>th</sup> August, 2005 on the subject mentioned above and to convey the advice of the Commission as under:

2.1 The Commission note that the D.A. vide memo No.C-14011/39/2001-Ad.V-4078-84 dt. 13.12.2001 conveyed to Smt L R Mithran, Commissioner of Central Excise (Retired on 31.7.2002) that it was proposed to hold an enquiry against her under Rule 14 of the CCS(CCA) Rules, 1965 and she was called upon to answer the following Articles of Charge:-

**Article-I**

Whereas Smt. L R Mithran, IRS while functioning as Commissioner Central Excise, Shillong failed to maintain absolute integrity and acted in an unbecoming manner in as much as she, during the year 1996-97 obtained employment for her son Shri A R Mithran with M/s Kitply Industries Ltd. Kolkata with whom she had official dealings without obtaining prior permission of the competent authority, and thereby contravened Rule 4 of the CCS(Conduct) Rules, 1964.

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### Article-II

Whereas said Smt. L R Mithran, IRS, while acting as Commissioner Central Excise, Shillong during the year 1996-97 failed to maintain absolute integrity and acted in an unbecoming manner in as much as she, accepted donation/gift by way of Bank draft, including Tata mobile vehicle bearing Regd. No.ML-05-B-2648 given to Zami Memorial Charitable Trust created by her in the name of her late mother, which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kitply Industries with whom she had official dealings and thereby contravened Rule 3(1)(i) and (iii) of CCS(Conduct) Rules, 1964.

### Article-III

Whereas said Smt. L R Mithran, IRS while acting as Commissioner, Central Excise, Shilling failed to maintain absolute integrity by obtaining a sum of Rs. 1 lakh in the name of Zami Memorial Trust (ZMTC) from unknown and dubious source through bank draft without intimation/permission from the competent authority and thereby contravened Rule 18(3) and 3(1) of CCS(Conduct) Rules, 1964.

2.2 A statement of imputation of misconduct/misbehaviour in support of each Article of charge was enclosed with the said Memo as Annexure II. A list of documents by which and a list of witnesses by whom, the Articles of Charge were proposed to be sustained, were also enclosed with the said Memo as Annexures III and IV respectively. On receipt of the charge sheet, the C.O. submitted her reply on 8.1.2002 denying all the three Articles of charge. On denial of the Charges, an open inquiry was conducted. The I.O. submitted his report on 28.8.2002 holding all the three Articles of charges as not proved against the C.O. The D.A. disagreed with the findings of the I.O. and as required under the rules, a copy of the inquiry report along with the show cause notice indicating reasons for disagreement was sent to the C.O. on 20.1.2004 directing her to show cause as to why the said findings of the IO should not be disagreed with and a penalty of suitable cut in her monthly pension be imposed on her. The Charged Officer submitted her reply to the show cause notice vide her letter dt. 5.6.2004. After taking into consideration the I.O's report, the C.O.'s representation dt. 5.6.2004 and all other facts and circumstances of the case, the D.A. held the Charges as proved and took a tentative decision to impose a suitable cut in the monthly pension as admissible to the Charged Officer. The D.A. before passing orders in this regard, sent the case records to the Commission for advice.

2.3. The Commission have examined the case carefully. Their observations are as under.

Qn.

3. Briefly stated, the Commission observe that the case of the Prosecution is that when the CO was posted and functioning as Commissioner, Central Excise, Shillong, during the period 1996-97, she, in the year, 1996, obtained valuable thing without consideration from Shri S P Goenka, Chairman M/s Kitply Industries Ltd. and Advisor to the Board of Directors M/s Warren Tea Ltd. during adjudication proceeding of M/s Kitply Industries Ltd. Kolkata and thereby committed departmental misconduct. According to the DA, the CO adjudicated the Excise Evasion Duty case of M/s Kitply Industries Ltd. Kolkata in the year 1996 which was detected in 1994 by the official(s) of the Directorate General, Anti Evasion (DGAE), Kolkata and the same was forwarded to the Shillong Commissionerate as the factory premises of the said firm falls within the jurisdiction of Shillong. On 17.9.1996, Shri S P Goenka in the Capacity of Chairman, M/s Kitply Industries Ltd. attended the preliminary enquiry along with other officials of the company at Shillong which was heard by the CO, as Commissioner, Central Excise, Shillong. The CO passed the final adjudication order No. 31/COMMOR/CH/44/96 dt. 5.12.96 in the above case, slicing down the evaded amount of duty from Rs. 5,79,07,804/- to Rs. 9,14,40,448/- in favour of M/s Kitply. Further, according to the DA; during the pendency of the adjudication proceedings, the CO established Zami Memorial Charitable Trust on 12.10.1996 in the name of her late mother (Zami) and obtained certificate of registration bearing No.SR/ZMCT-730/96 of 1996 dt. 27.11.96 from the Registrar of Societies, Govt. of Meghalaya, Shillong. As per the memo of association of the above trust, all direct descendents of Pl Zami shall be trustees and her father P U K T Khuma shall be the Chief Patron of the Trust for life. As such the CO, i.e. Smt. L R Mithran, IRS *alias* Pl Lalpari was one of the main trustees and also represented other trustees of Zami Memorial Charitable Trust.

4. Shri S P Goenka, Chairman, M/s Kitply and Advisor to the Board of the Directors of M/s Warren Tea Ltd. and during pendency of the adjudication proceedings gifted one Tata Mobile Vehicle having registration No. ML-05-B-2648 to aforesaid Zami Memorial Charitable Trust, Shillong through Himmat Singka Auto Enterprises Ltd. Guwahati which was purchased vide money receipt No. 2514 dt. 9.11.1996. The cost of the above vehicle was paid to HAE by way of DD No.177156 dt. 7.11.96 for Rs. 3,01,955/-. After passing the aforementioned final order dt. 5.12.1996, Shri S P Goenka, Chairman of M/s Kitply and advisor to the Board of Directors of M/s Warren Tea directed Shri P K Bose, Managing Director, M/s Warren Tea Ltd. vide note dt. 20.12.96 to purchase one DD for Rs. 5 lakhs in favour of Zami Memorial, Shillong. Accordingly, DD No. 483425 dt. 23.12.96 for Rs. 5 lakhs was obtained by debiting the account of Warren Tea Ltd. maintained with State Bank of India, Commercial Branch, Kolkata and subsequently sent to the said Trust. This DD of Rs.5 lakhs was deposited on 3.1.97 in A/c No.10308 of Zami Memorial maintained with Vijaya Bank, Laitumukhrah Branch, Shillong and credited in the said account on 4.1.97. The CO received a sum of Rs.1 lakh in the name of Zami Memorial through DD No.535617 dt.

22.5.97, issued by United Bank of India, G S Road Branch, Guwahati from dubious source which she claimed to have received as donation, but without prior permission of or intimation to the Department. Also, the DA alleges that the CO had obtained employment for her son Shri A R Mithran and accommodation at Tura, Meghalaya from M/s Kitply with whom she had official dealings during the year 1997.

5. The Commission observe that upon perusal of the case records, the following facts emerge with regard to the instant case.

(i) Vide DA's Order dated 13.3.2002, Shri Krishna Kant, the then Addl. Director General of Central Excise Intelligence, New Delhi, was appointed as the Inquiring Authority to inquire into the Charges framed against the CO. On 28.8.2002, the IO submitted his Inquiry report with the conclusion that the allegations contained in the Statement of Imputations of misconduct contained in the Charge-sheet have not been established as the Charges viz. Art.I, Art.II, and Art.III, as contained in the Memorandum dated 13.12.2001 are not proved against the CO.

(ii) The D.A. disagreed with the findings of the IO and held all the three Articles of charge as proved giving the reasons as contained in their Show-cause Notice dated 29.1.2004.

(iii) Out of the Articles of Charge as per the Charge sheet against the CO, the basic allegation against the Charged Officer is that she showed undue favour to M/s Kitply Ind. Ltd., Kolkata, while adjudicating a show-cause notice for the alleged evasion of duty to the tune of Rs. 35,79,07,804/-. It has been alleged specifically that she passed the adjudication order "slicing down the evaded payment of Rs.35,79,07,804/- to Rs.9,14,40,448/-" for a consideration and she obtained employment for her son, Shri A R Mithran with M/s Kitply Industries Ltd. with whom she had official dealings, without prior permission of the competent authority.

(iv) Upon adjudication of the case of duty evasion by M/s Kitply Industries Ltd., which was detected by the officers of Directorate General of Anti-evasion, Kolkata in 1994; the CO passed the Order on 5.12.1996, slicing down the Central Excise duty from Rs.35,79,07,804/- to Rs.8,13,40,448 [comprising of Rs.7,05,95,368 on account of non-inclusion of advertisement cost incurred by M/s. Landle in the assessable value, Rs.48,48,500/- on account of non-inclusion of interest accrued on the deposit of Rs.2 crores made by M/s. Landle to M/s. Kitply Industries Ltd. and Rs.58,96,580 on account substitution of grade in the seven Depots as indicated in the said Order]. Thereafter, Hon'ble Customs, Excise and Gold (Control) Appellate Tribunal [CEGAT] Eastern Bench, Kolkata vide their Order dated 15.6.99 sliced down the amount of Rs.8,13,40,448/- (as per the CO's

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adjudication order) to a much smaller amount of Rs. 58,96,580/- plus penalties of Rs. 10,00,000/-. This shows that the CEGAT confirmed one demand, amounting to Rs. 58,96,580/- of the CO's adjudication order whereas set aside other two demands totalling to Rs. 7,54,43,868/- as well as the penalty of Rs. 1,00,000/- as imposed on Shri P.K. Goenka as per the CO's order dated 5.12.1996. Further, as per the case records, while accepting the CEGAT's order, the Hon'ble Supreme Court dismissed the Civil Appeal filed by the Department against the said CEGAT's order. Here, it is to be pointed out that it is not obligatory for an adjudicating authority to confirm the same amount as has been demanded in the Show cause notice. Otherwise, it will amount to say that the adjudicating authority has no option but to confirm each and every Show cause notice which sounds nothing but absurd. So, if an adjudicating authority has reduced the amount as demanded in the Show cause notice, it cannot be considered/treated as loss to the Government. Therefore, considering the whole sequence of events as brought out hitherto, it is not proved that the CO while passing the adjudication order dated 5.12.1996 had committed any illegality or acted with any malafide motive to show any undue favour to the said firm. As such, the Commission are of the view that the findings of the IO with regard to this main Charge are in order, i.e. this Charge is not proved against the CO.

(v) ✓ The other part of this Charge is regarding employment of the CO's son with M/s. Kitply Industries, with whom the CO had official dealings without obtaining prior permission of the competent authority in contravention of Rule 4 of the CCS (Conduct) Rules, 1964.

6. The Commission further observe from the case records, the adjudication order in the case was passed by the CO on 5.12.96 whereas the temporary assignment for which the CO's son was engaged started much later in July, 1997. Thus, it appears that there is no immediate connectivity between the event of CO's passing the adjudication order and offer of acceptance of the casual engagement by her son. In this regard the CO has pleaded that she has established beyond a reasonable doubt by producing abundant evidence in the shape of documentary as well as depositions of defence witnesses as detailed in Para 5 of her letter dt. 5.6.2004 that her son never made her aware of his assignment with M/s Kitply. She has emphasized that as she was not aware of his employment with the said firm, it could not have been possible for her to intimate about such employment to the prescribed authority. In the face of the abundant evidence on record and also the findings of the IO, she maintains that she was not aware of such employment and as such she could not have informed the department. However, during the course of examination of Shri A.R. Mithran, son of the CO, it has been clearly brought on record that during the period when Shri A.R. Mithran got assignment/employment with M/s. Kitply Industries Ltd. he was staying with his mother i.e. the CO. Further, as seen from the cross-examination, the said offer was received from M/s. Kitply Industries Ltd. through post. It is also a matter of record

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that Shri A.R. Mithran, was looking for some job for quite sometime and he got offer from a person with whom her mother i.e. the CO was having official business who, being territorial Commissioner of Central Excise having jurisdiction over manufacturing unit of M/s. Kitply Industries Ltd, had brought down a huge chunk of demand against them. The circumstances suggest that the CO cannot be totally unaware of the assignment given to her son by M/s. Kitply Industries Ltd. since her son Shri A.R. Mithran was staying unemployed with her. Therefore, the Commission is of the view that the allegation that she failed to obtain prior permission from the Government in securing employment with the persons with whom she had official dealings stands proved.

(vi) According to remaining two Articles of charge, the CO accepted donation/gifts by way of bank drafts including a Tata Mobile Vehicle given to Zami Memorial Charitable trust created by her in the name of her late mother which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kitply with whom she had official dealings. To this, the Charged Officer, in her defence, presented as many as 14 affidavits, duly sworn in before the Judicial Magistrate and a large number of defence witnesses who appeared before the IO and deposed that she did not deal with the day to day affairs of the Zami Memorial Charitable Trust and hence had no knowledge about any donation, whether in cash or in kind to this trust. ✓

7. ✓ The Commission observe that the available case records in this regard show that the Charged Officer was a founder member of the Trust as she had herself deposited the Registration fee and was also a founder member of Governing body of the Zami Memorial Trust which was created in the name of her late mother. It has also not been disputed that donations amounting to Rs. 5 lakhs and 1 lakh respectively had been received by the Trust in addition to a Tata Mobile Vehicle which was gifted to the Trust by a sister concern of M/s Kitply. Rule 15(2)(d) clearly states that a Government servant may without previous sanction of the govt. take part in the registration, promotion or management (not involving the holding of an elective office) of a literary, scientific or charitable society.....provided that in a case falling under Clause (d).....his official duty shall not suffer thereby and "he shall within a period of one month of his taking part in such activity, report to the Govt. giving details of the nature of his participation." ✓ Considering all these facts, there is no escape from the conclusion that the CO had an important role to play in the Zami Memorial Trust which received a vehicle and a sum of Rs.1 lakh in the name of the Trust from a Tea company as well as from unknown sources. It is also not credible that she had no knowledge of all such events. Therefore, the D.A. has rightly stated that the CO appears to have concealed from the Department her participation in the activities of the Trust. Hence, the allegations made under Article II and III stand substantiated against the CO. ✓

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8. Taking all facts and circumstances of the case as discussed above in their totality, the Commission are of the view that although it is not conclusively proved that while passing the adjudication order dated 5.12.96 [On Show-cause Notice dated 28.2.95 issued by the Commissioner, Central Excise, Shillong to M/s. Kitply Industries Ltd.], slicing down the Central Excise Duty to Rs.8,13,40,448/- to be paid by M/s. Kitply Industries Ltd., had committed any illegality or acted with malafide motive to show any undue favour to the said firm, the Articles I, II and III of the Charge stand proved to the extent as discussed above. Further, considering that the CO, being a Commissioner of Central Excise, was a very senior officer, the gross misconduct committed by her in view of the Articles of Charge as stand proved becomes very grave.

9. In the light of the observations and findings as discussed above and after taking into account all other aspects relevant to the case, the Commission note that the Charges established against the Charged Officer, constitute grave misconduct on her part and consider that the ends of justice would be met in this case **if the penalty of withholding of 25% of the monthly pension otherwise admissible to Smt. L R Mithran is imposed on her for a period of ten years and further the gratuity admissible to her should be released if not required otherwise.** The Commission advise accordingly.

10. A copy of the order passed by the Ministry in this case may be endorsed to the Commission for perusal and records.

11. The case records as per the list attached are returned herewith. Their receipt may kindly be acknowledged.

Yours faithfully,



(VIJAY BHALLA)  
UNDER SECRETARY  
TEL:011-23385516

Encls.

1. Case records as per list attached.
2. Two spare copies of this letter.

2024/2004 P. 269  
30 " 65  
L. Jayaraman

File in Court on 28/1/2008  
Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Motin Ud-Din Ahmed  
M.A., B.Sc., LL.B.  
Addl. Central Govt. Standing Counsel  
Guwahati Bench (CAT)

IN THE MATTER OF :

O.A. No.73/2007

Mrs L.R.Mithran

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

- AND -

IN THE MATTER OF :

Written statement submitted by the Respondents.

WRITTEN STATEMENT

The humble answering respondents  
submit their written statement as  
follows :

1.(a) That I Asok Kumar Mandal s/o  
Late Jitendra Nath Mandal  
and Respondents Asok Kumar Mandal in the above case and I have gone through  
a copy of the application served on me and have understood the contents  
thereof. Save and except whatever is specifically admitted in the written  
statement, the contentions and statements made in the application may  
be deemed to have been denied. I am competent and authorized to file  
the statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on  
facts and in law.

Received  
Copy of Wt.  
7/1/08

(c) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(d) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

2. Brief facts of the case :

(a) That the brief facts of the case are that Smt L.R.Mithran (hereinafter referred to as the Applicant), while posted and functioning as Commissioner, Central Excise, Shillong during the year 1996 is alleged to have helped M/s Kitply Industries Ltd., Calcutta in evasion of Central Excise Duty to the tune of Rs. 27 Crores and for deriving material/monetary benefits for the company and/or for herself, in as much as M/s Kitply Industries Ltd. was served with a Show Cause Notice by Director General, Anti Evasion, Calcutta accusing the Company of evasion of Central Excise duty to the tune of Rs. 36 Crores (approx.) by adopting illegal procedure. The Applicant who heard the case in September, 1996 had finally issued the adjudication order in early December, 1996 and in between these dates, she contacted Chairman, of M/s Kitply Industries Ltd. a number of times prior to issue of adjudication order passed by her. She sliced down the Central Excise duty from Rs. 36 Crores to 9 Crores thereby causing loss of Res. 27 Crores to the Government. She obtained employment for her son Shri A.R.Mithran with M/s Kitply Industries Ltd., Calcutta during the period 1996-97 without obtaining prior permission of the competent authority. She accepted donation of Rs.5 Lakhs from the said Company in faqvour of Zami Memorial Charitable Trust, Shillong which is registered in the name of her Late Mother (Zami) through Demand Draft No.483425 dated

प्रशासनिक अधिकरण  
Administrative Tribunal

- 8 JAN 2003

गुवाहाटी न्यायपीठ  
Guwahati Bench

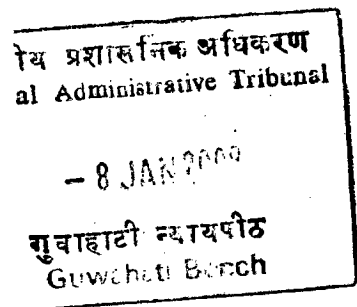
Alexander Mander

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23.12.96 issued by State Bank of India, Commercial Branch, Calcutta which was deposited in A/c No.10308 of the said Trust, maintained with Vijaya Bank, Laitumkhrah Branch, Shillong and credited in the said account on 4.1.1997. She further received a sum of Rs. 1 lakh in the name of the said Trust through Demand Draft No.535617 dated 22.5.19197, issued by United Bank of India, G.S.Road Branch, Guwahati from dubious source, which she claimed to have received as donation, but without prior permission or intimation of the Department. During the pendency of the adjudication proceedings she also got a Tata Mobile Vehicle given to Zami Memorial Charitable Trust created by her in the name of her late mother from the Company, the cost of which was Rs. 3,01,955/-. Thus she contravened Rule 3(1), Rule 4 and Rule 18(3) of C.C.S (Conduct) Rules, 1964.

(b). That on the basis of a confirmed complaint, the case was first investigated by the Directorate General of Vigilance, Calcutta. However, looking into the alleged financial transaction involved, the case was entrusted to the CBI for investigation. As per their report dated 18.6.2001 CBI found sufficient material for initiating action against the Applicant and recommended prosecution under Section 11 of PC Act, 1988 and Regular Departmental Action for major penalty against the Applicant. Accordingly, after consultation with CVC, sanction order for her prosecution in a court of competent jurisdiction was issued vide Order dated 28.12.2001. Simultaneously, she was charge sheeted under Rule 14 of the CCS (CCA) Rules, 1965 vide Memo dated 13.12.2001 containing the charges as mentioned below :

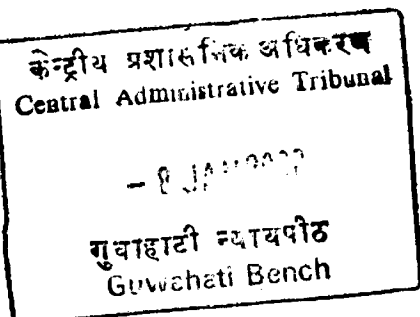
- (i) That she obtained employment for her son Shri A.R.Mithran with M/s Kitply Industries Ltd. Kolkata with whom she had official dealings without obtaining



Asst. Registrar General

(CCA) Rules, 1965 vide Memo dated 13.12.2001 containing the charges as mentioned below :

- (i) That she obtained employment for her son Shri A.R.Mithran with M/s Kitply Industries Ltd. Kolkata with whom she had official dealings without obtaining prior permission of the competent authority thereby contravened Rule 4 of CCS (Conduct) Rules, 1964.
- (ii) That she accepted donation/gift by way of bank draft including a Tata Mobile vehicle given to Zami Memorial Trust created by her in the name of her late mother, which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kitply Industries Ltd., with whom she had official dealings and thereby contravened rule 3(1) (i) and (iii) of the CCS (Conduct) Rules, 1964.



(c) That on denial of charges, an open inquiry was conducted. In his report dated 28.8.2002, the inquiry Officer held all the three Articles of charges against the charged officer as not proved.

(d) That the inquiry report was considered by the disciplinary authority in consultation with Directorate General of Vigilance, Customs & Central Excise, and the Central Vigilance Commission. In disagreement with the findings of the Inquiry Officer, it was observed that the IO has held that the Article-I of the charge is based on an inference and there is no direct evidence to show that the Applicant had any role to play in temporary engagement of her son with M/s Kitply Industries. The said findings

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of the IO does not appear to be in conformity with provisions of Rule 4(2)(ii) of CCS (Conduct) Rules, 1964 which says, "A Govt. servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any company or firm, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that company or firm." Therefore, it was incumbent upon the Applicant to intimate to the Department about employment of her son with M/s Kitply Industries Ltd., Kolkata with whom she had official dealings, which she failed to do so. It is immaterial whether the employment was temporary or permanent as the Rule 4 ibid does not make any difference in permanent and temporary employment.

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
- 0 JAN 1972  
गुवाहाटी न्यायपीठ  
Guwahati Bench

(e) That regarding Article II and III of the charges, it was observed that the IO has failed to consider the lapses on the part of the Applicant vis-à-vis conduct rules while inferring that evidence is necessary which can confirm either the Applicant's demand and/or acceptance or the knowledge/awareness of the above donations in addition to the point as to who was the beneficiary ultimately and holding the charges as not proved. It is a fact that the Trust was created by her during the pendency of the adjudication proceedings. She was one of the main promoters of the Trust and she herself had deposited the registration fees, which indicate that she has been actively associated with the activities of the Trust. Therefore, donation/gift given to the Trust was well within her knowledge. Moreover, she has not intimated to the Department about forming of a charitable Trust as required under Rule 15(2)(d) of the CCS (Conduct) Rules, 1964. Therefore, it appeared that she had concealed from the Department her participation in the activities.

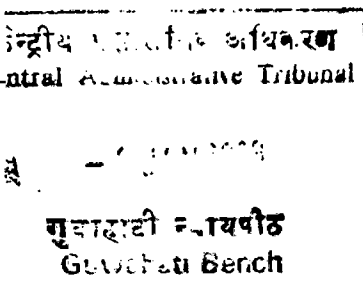
Pranav Bhandari  
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the Trust which inter-alia included accepting donation/gifts by way of bank drafts including Tata Mobile vehicle given to Zami Memorial Trust which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kitply Industries Ltd., Kolkata with whom she had official dealings. It was observed that this act of her concealment goes to prove her failure to maintain absolute integrity and indulging in actions unbecoming of a Govt. servant. Thus, findings of IO in respect of Articles II and III of charge were also found not acceptable.

(f) That in view of above disagreement with IO's Report and after consultation with CVC, a Show Cause Notice in terms of Rule 15(2) of the CCS (CCA) Rules, 1965 was issued on 9.1.2004 to the applicant indicating reasons for disagreement as well as calling for her representation as to why a penalty of suitable cut in her monthly pension be not imposed on her.

(g) That the Applicant submitted her reply/representation vide letter dated 5.6.2004. The reply of the Applicant was examined by the Disciplinary Authority and after consideration of the case records, the same were forwarded to the UPSC along with tentative decision of the Disciplinary Authority to impose a penalty of 25% cut in pension on the applicant vide letter dated 17.08.2005 for their statutory advice.

(h) That upon perusal of the case records, the UPSC, in their advice dated 17.1.2006, observed that considering the whole sequence of events as brought out hitherto, it is not proved that the Applicant while passing the adjudication order dated 5.12.1996 had committed any illegality or acted with any malafide motive to show any undue favour to the said firm. As such, the Commission are of



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the view that the findings; of the IO with regard to this main Charge are in order, i.e. the Charge is not proved against the Applicant. But the other part of the Charge regarding employment of the Applicant's son with M/s Kitply Industries, with whom the Applicant had official dealings without obtaining prior permission of the competent authority in contravention of Rule 4 of the CCS (Conduct) Rules, 1964. The Commission observed that during the course of examination of Shri A.R.Mithran, son of the Applicant, it has been clearly brought on record that during the period when Shri A.R.Mithran got assignment/employment with M/s Kitply Industries Ltd., he was staying with his mother i.e. the Applicant. Further, as seen from the cross-examination, the said offer was received from M/s Kitply Industries Ltd. through post. It is also a matter of record that Shri A.R.Mithran, was looking for some job for quite sometime and he got offer from a person with whom her mother i.e. the Applicant was having official business who, being territorial Commissioner of Central Excise having jurisdiction over manufacturing unit of M/s Kitply Industries Ltd., had brought down a huge chunk of demand against them. The circumstances suggest that the Applicant cannot be totally unaware of the assignment given to her son by M/s Kitply Industries Ltd., since her son Shri A.R.Mithran was staying unemployed with her. Therefore, the Commission is of the view that the allegation that she failed to obtain prior permission from the Government in securing employment with the persons with whom she had official dealings stands proved. That as regards remaining two articles of charge, the Commission observed that the applicant accepted donation/gifts by way of bank drafts including a Tata Mobile vehicle given to Zami

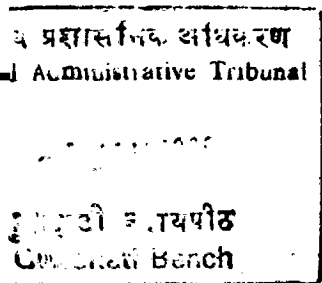
प्रशासनिक अधिकरण  
Administrative Tribunal

गुवाहाटी न्यायपीठ  
Guwahati Bench

my order  
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Memorial Charitable Trust created by her in the name of her late mother which were paid by M/s Warren Tea Ltd., a sister concern of M/s Kitply with whom she had official dealings. To this, the charged officer in her defence, presented as many as 14 affidavits, duly sworn in before the Judicial Magistrate that she did not deal with the day to day affairs of the Zami Memorial Charitable Trust and had no knowledge about any donation, whether in case or in kind to this trust. The Commission has observed that the available case records in this regard show that the Charged Officer was a founder member of the Trust as she had herself deposited the Registration fee and was also a founder member of Governing Body of the Zami Memorial Trust which was created in the name of her late mother. It has also not been disputed that donations amounting to Rs. 5 lakhs and 1 lakh respectively had been received by the Trust in addition to a Tata Mobile Vehicle which was gifted to the Trust by a sister concern of M/s Kitply. Rule 15(2)(d) clearly stated that a Government servant may without previous sanction of the govt. take part in registration, promotion or management (not involving the holding of an elective office) of a literary, scientific or charitable society .....provided that in a case falling under Clause (d)..... His official duty shall not suffer thereby and "he shall within a period of one month of his taking part in such activity, report to the Govt. giving details of the nature of his participation." Considering all these facts, there is no escape from the conclusion that the Applicant had an important role to play in the Zami Memorial Trust which received a vehicle and a sum of Rs. 1 lakh in the name of the Trust from a Tea Company as well as from unknown sources. It is also not credible that she had no knowledge of all such events.

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 377-  
 Asok Kumar Mandal

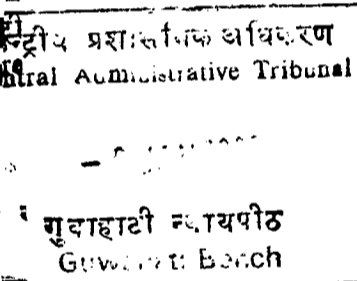


Therefore, the Commission supported the view taken by the Disciplinary Authority that the Applicant appeared to have concealed from the Department her participation in the activities of the Trust. Thus the Commission concluded that the allegations made under Article II and III stand substantiated against the Applicant.

(i) That taking all facts and circumstances of the case, the Commission was of the view that although it is not conclusively proved that while passing the adjudication order dated 5.12.1996 on Show cause notice dated 28.2.1995 issued to M/s Kitply Industries Ltd., the Applicant had committed any illegality or acted with malafide motive to show any undue favour to the said firm, the Articles I, II and III of the Charge stand proved to the extent as discussed above. Further, considering that the Applicant, being a Commissioner of Central Excise, was a very senior officer, the gross misconduct committed by her in view of the Articles of Charge as stand proved becomes very grave.

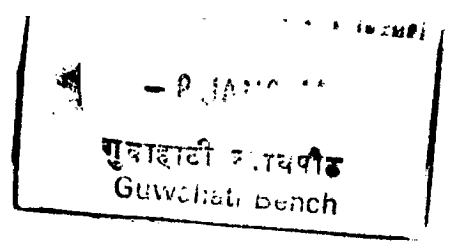
(j) That the Commission after taking into account all aspects relevant to the case, considered that the Charges established against the Applicant, constitute grave misconduct on her part and advised that the ends of justice would be met in this case if the penalty of withholding of 25% of the monthly pension otherwise admissible to the Applicant is imposed on her for a period of ten years and further the gratuity admissible to her should be released if not required otherwise.

(k) The Disciplinary authority, after examining the advice of the Commission and the facts and circumstances of the case, the documents on record and the submissions of the Applicant four



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the advice very well reasoned, just & fair and accepted the same. Accordingly, the Disciplinary Authority, vide order dated 21.03.2006, imposed a penalty of withholding of 25% of the monthly pension otherwise admissible to the Applicant on her for a period of ten years and further the gratuity admissible to her should be released if not required otherwise.

3. That with regard to the statements made in para 1 of the application the answering respondents beg to state that the application is opposed as the order dated 21.03.2006 is based on findings in an open enquiry and after consultation with independent bodies namely, the CVC and the UPSC and after considering all submissions of the applicant as per provisions of Rule 14 of the CCS (CCA) Rules , 1965 read with Rule 9 of the CCS (Pension) Rules, 1972.

4. That with regard to the statements made in paragraphs 2 & 3 of the application the answering respondents beg to state that these are being matter of record.

5. That with regard to the statements made in paragraphs 4 of the application the answering respondents beg to state that in view of the submissions made hereinabove, the contents of the corresponding para of the OA need no reply. However, all averments contrary to facts on record are vehemently denied.

6. That with regard to the statements made in paragraphs 1.1.1 of the application the answering respondents beg to state that these are being matter of record, needs no reply.

7. That with regard to the statements made in paragraphs 1.1.2 of the application the answering respondents beg to state that the contention made in this sub para is wrong and hence denied.

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the advice very well reasoned, just & fair and accepted the same. Accordingly, the Disciplinary Authority, vide order dated 21.03.2006, imposed a penalty of withholding of 25% of the monthly pension otherwise admissible to the Applicant on her for a period of ten years and further the gratuity admissible to her should be released if not required otherwise.

3. That with regard to the statements made in para 1 of the application the answering respondents beg to state that the application is opposed as the order dated 21.03.2006 is based on findings in an open enquiry and after consultation with independent bodies namely, the CVC and the UPSC and after considering all submissions of the applicant as per provisions of Rule 14 of the CCS (CCA) Rules, 1965 read with Rule 9 of the CCS (Pension) Rules, 1972.

4. That with regard to the statements made in paragraphs 2 & 3 of the application the answering respondents beg to state that these are being matter of record.

5. That with regard to the statements made in paragraphs 4 of the application the answering respondents beg to state that in view of the submissions made hereinabove, the contents of the corresponding para of the OA need no reply. However, all averments contrary to facts on record are vehemently denied.

6. That with regard to the statements made in paragraphs 1.1.1 of the application the answering respondents beg to state that these are being matter of record, needs no reply.

7. That with regard to the statements made in paragraphs 1.1.2 of the application the answering respondents beg to state that the contention made in this sub para is wrong and hence denied.

The order dated 21.03.2006 has not been issued merely on the advice of the UPSC. As stated in the brief facts of the case hereinabove, the Disciplinary Authority acted after consideration of facts and circumstances of the case as well as evidences on record. Issue of Show cause notice in disagreement with inquiry report and the tentative decision of the Disciplinary Authority to impose penalty clearly show that the decision to impose penalty was not merely on UPSC's advice. As regards UPSC's advice, it is submitted that the UPSC are only an advisory body and their advice had been sought in the case in accordance with the requirement of consultation with them as laid down in Article 320 (3) (c) of the Constitution of India read with Regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958. The Commission tendered its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the Inquiry Officer, the evidence on record, representation of the Charged Officer etc. The advice of the Commission is self contained and self explanatory.

8. That with regard to the statements made in paragraphs 3-3.1.5 of the application the answering respondents beg to state that the relevant enquiries and/or the conduct of the petitioner conform to certain standards and was given a fair and reasonable opportunity to defend herself. Further the Commissioner and/or disciplinary authority conducted/scrutinized objectively and dispassionately not merely during the procedural stage of enquiry, but also in dealing with the evidence and material on record when drawing up the final order. The conclusion is rested on the evidence and not on the matters outside the record and the same was without

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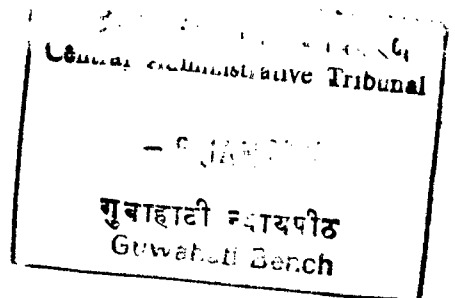
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Central Administrative Tribunal
- 8 JAN 2007
गुवाहाटी न्यायपीठ Guwahati Bench

any bias and without vindictiveness. It is submitted that during the course of examination of Shri A.R.Mithran, son of the applicant, it has been clearly brought on record that during the period when Shri A.R.Mithran got assignment/employment with M/s Kitply Industries Ltd. he was staying with his mother i.e. the Applicant. Further, as seen from the cross-examination, the said offer was received from M/s Kitply Industries Ltd. through post. It is also a matter of record that Sri A.R.Mithran, was looking for some job for quite sometime and he got offer from a person with whom her mother i.e. the Applicant was having official business who, being territorial Commissioner of Central Excise having jurisdiction over manufacturing unit of M/s Kitply Industries Ltd., had brought down a huge chunk of demand against them. The circumstances suggest that the Applicant cannot be totally unaware of the assignment given to her son by M/s Kitply Industries Ltd. since her son Sri A.R.Mithran was staying unemployed with her. Rule 2(ii) CCS (Conduct) Rules, 1964 provides that "A Govt. servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any company or firm, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that company or firm." Therefore, it was incumbent upon the Applicant to intimate to the Department about employment of her son with M/s Kitply Industries Ltd., Kolkata with whom she had official dealings, which she failed to do so. It is immaterial whether the employment was temporary or permanent as the Rule 4 ibid does not make any difference in permanent and temporary employment. Therefore, the allegation that she failed to obtain prior permission from the

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Government in securing employment with the persons with whom she had official dealings stands proved. She has also not intimated to the Department that her son was independent since he attained majority as required under Rule 15(3) of CCS (Conduct) Rules, 1964.

9. That with regard to the statements made in sub paragraphs 3.2.1-3.2.4 of the application the answering respondents beg to state that these are not acceptable. It is submitted that the Trust was created by her during the pendency of the adjudication proceedings. The available case records show that the Applicant was a founder member of the Trust as she had herself deposited the Registration fee and was also a founder member of Governing Body of the Zami Memorial Trust which was created in the name of her late mother. Donations amounting to Rs. 5 lakhs and 1 lakh respectively had been received by the Trust in addition to a Tata Mobile Vehicle which was gifted to the Trust by a sister concern of M/s Kitply. Rule 15(2)(d) clearly states that a Government servant may without previous sanction of the Govt. take part in registration, promotion or management (not involving the holding of an elective office) of a literary, scientific or charitable society.....provided that in a Case falling under Clause (d).....his official duty shall not suffer thereby and "he shall within a period of one month of his taking part in such activity, report to the Govt. giving details of the nature of his participation." All these facts clearly show that the Applicant had an important role to play in the Zami Memorial Trust which received a vehicle and a sum of Rs. 1 lakh in the name of the Trust from a Tea Company as well as from unknown sources. It is also not credible that she had no knowledge of all such events. Thus it is evident that the Applicant appeared to have concealed from the

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- 8 JAN 1981

गुवाहाटी न्यायपीठ  
Guwahati Bench

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Department her participation in the activities of the Trust. Therefore, the allegations made under Article II and III against the Applicant stand substantiated.

10. That with regard to the statements made in sub paragraph 4.1.1 and para 5 of the application the answering respondents beg to state that these are being matters of record.

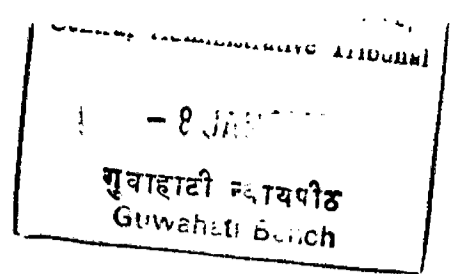
11. That with regard to the statements made in sub paragraph 4.1.2-4.3.1 of the application the answering respondents beg to state that the contentions are wrong and denied in view of detailed replies above.

12. That with regard to the statements made in sub paragraph 6 of the application the answering respondents beg to state that the contention is wrong and hence denied. It has been clearly stated above that the Disciplinary Authority acted after consideration of facts and circumstances of the case as well as evidences on record. Issue of Show Cause Notice in disagreement with inquiry report and the tentative decision of the Disciplinary Authority to impose penalty clearly show that the decision to impose penalty was that of Disciplinary Authority. As regards UPSC's advice, it is submitted that the UPSC are only an advisory body and their advice had been sought in the case in accordance with the requirement of consultation with them as laid down in Article 320 (3) (c) of the Constitution of India read with Regulation 5 (1) of the UPSC (Exemption from Consultation) Regulations, 1958. The Commission tendered its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the Inquiry Officer, the

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evidence on record, representation of the Applicant etc. The advice of the Commission is self contained and self explanatory.

13. That with regard to the statements made in sub paragraph 7 of the application the answering respondents beg to state that the contention is wrong and hence denied.

14. That with regard to the statements made in paragraph 5.1 of the application the answering respondents beg to state that the contention is wrong, vague and repetitive and hence denied. It is reiterated that the UPSC are only an advisory body and their advice had been sought in the case in accordance with the requirement of consultation with them as laid down in Article 320(3) (c) of the Constitution of India read with Regulation 5 (1) of the UPSC (Exemption from Consultation) Regulations, 1958. The Commission tendered its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the Inquiry Officer, the evidence on record, representation of the Applicant etc. In fact, it is evident from the Commission's advice dated 17.01.2006 was in conformity with the tentative decision of the Disciplinary Authority.

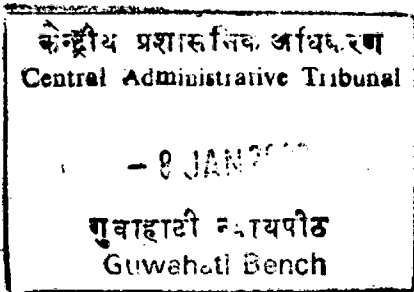
15. That with regard to the statements made in paragraph 5.2 of the application the answering respondents beg to state that the contention is wrong and repetitive and merits no comment in view of submissions above.

16. That with regard to the statements made in paragraphs 6, 7, 10, 11 and 12 of the application the answering respondents beg to state that the contents made in these paragraphs are being matter of record, needs no reply.

17. That with regard to the statements made in paragraphs 9 of the application the answering respondents beg to state the interim relief sought is not maintainable as the application is devoid of any merit and deserves to be dismissed in limine.

18. That this reply has been made bona fide and for the ends of justice and equity.

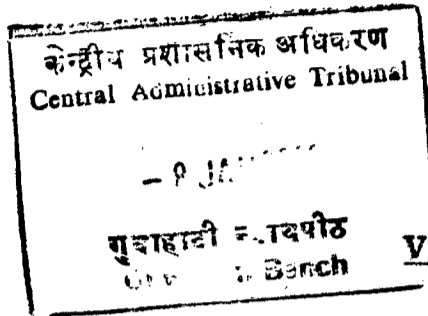
It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with cost.



Asok Kumar Mandal

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**VERIFICATION**

I,

Asok Kumar Mandal

, Son

of late Jitendra Nath Mandal aged about 59 years working as

Deputy Commissioner, Central Excise, Guwahati Division

being duly authorized and competent to sign this verification, do hereby solemnly affirm and verify that the statements made in Para 2, 3, 7 & 12 & 14 are true to my knowledge, belief and information and those made in Para 4, 6 & 10 are true to my knowledge as per the legal advice and I have not suppressed any material facts.

And I sign this verification on this 5th day of January

2008 at

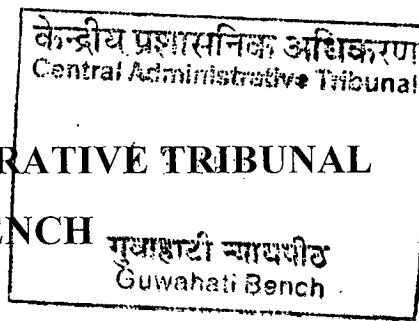
Asok Kumar Mandal

A.K. Mandal-II  
Dy. Commissioner  
Central Excise, Guwahati

Motin Ud-Din Ahmed  
M.A., B.Sc., LL.B.  
Addl. Central Govt. Standing Counsel  
Guwahati Bench (CAT)

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**



ORIGINAL APPLICATION NO. 119 OF 2007

Filed By: Dyk Applicant - JMD JGH: Mr. R.S. Choudhury Advocate 23/04/08

IN THE MATTER OF :

O.A No. 73/2007

Mrs. L. R. Mithran

..... Applicant

-Vs-

Union of India & Ors.

..... Respondents

-AND-

IN THE MATTER OF :

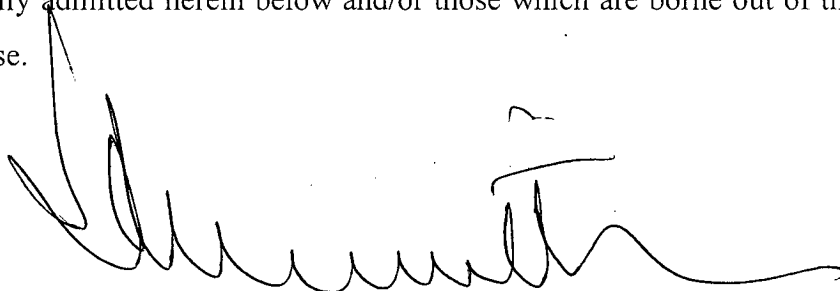
A Rejoinder / Affidavit-in-Reply filed on behalf of the Applicant against the Written Statement filed by the Respondents in the aforesaid Original Application

REJOINDER /AFFIDAVIT-IN-REPLY

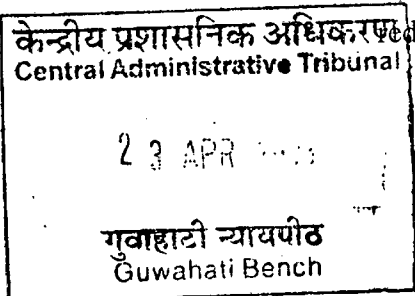
I, Mrs. L. R. Mithran, aged about 65 years, daughter of Late Pu K. T. Khuma, IFAS, retired Commissioner, Customs and Central Excise, resident of Nongrim Hills, Shillong, Meghalaya, do hereby solemnly affirm and state as follows :

1. That, I am the Applicant in the instant Original Application and as such, I am fully acquainted with the facts and circumstances of the case and am competent to swear the instant affidavit.
2. That, I have received a copy of the written statement filed on behalf of the Respondents and having perused the same; I have understood the contents thereof.
3. That, the deponent denies the correctness of the averments made in various paragraphs of the Written Statement, save and except those, which may be specifically admitted herein below and/or those which are borne out of the records of the case.

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4. That, with regard to the statements made in paragraph 1 (a) of the Written Statement, the Deponent has no comments to offer.
5. That, the Deponent categorically denies the statements made in paragraph 1 (b), (c) & (d) of the Written Statement. The principles of waiver, estoppel and acquiescence are in no way related to the case of the Deponent.
6. That, while categorically denying the statements made in paragraph 2 (a) of the Written Statement in seriatim, the Deponent humbly states the facts as follows :-
- (I) A show cause notice was issued to M/S Kitply Industries Ltd for approximately 36 Crores for evasion of central excise duty. The Applicant, in her capacity as Commissioner of Central Excise, adjudicated on the said show cause notice.
- (II) After adjudicating on merits, the Applicant in her best judgmental capacity imposed a penalty of approx. 8 Crores on M/S Kitply Industries Ltd for evasion of Central Excise Duty.
- (III) Thereafter, two appeals were filed against the said demand of Rs. 8 Crores in the Hon'ble Customs, Excise and Gold (control) Appellate Tribunal {CEGAT}, Eastern Bench, Kolkata. M/S Kitply Industries filed an appeal challenging the Demand Order of Rs. 8 Crores, so imposed by the Applicant. The Central Excise Department, however went in appeal against the Rs.26 Crores (odd) that was dropped by the Applicant. The Appeal so filed by the Department was dismissed, upholding the Order passed by the Applicant. The Appeal filed by M/S Kitply Industries, on the other hand, was allowed and the Hon'ble CEGAT *reduced* the penalty of approx 8 Crores so imposed by the Applicant to only Rs. 52 lakhs (approx).
- (IV) It is pertinent to note that when the penalty had been imposed upon M/S Kitply Industries, they had paid Rs. 1 Crore in advance. However, when the said amount was reduced to only Rs. 52 lakhs, the Departmental *refunded* the 48 lakhs excess to M/S Kitply Industries.
- (V) It is further pertinent to note that the department never went in Appeal to the Hon'ble Supreme Court against that Order of the Tribunal, whereby their Appeal had been dismissed. The Department, in fact, went in Appeal to the Apex Court against the Order of CEGAT whereby the penalty was reduced to Rs.52 lakhs. The said Civil Appeal was, however, dismissed by



the Hon'ble Apex Court in limine at the admission stage itself. Therefore the respondents are now estopped from making any aspersions with regard to the same on the Applicant, particularly in view of the fact that the Department itself did not deem it fit to file any appeal in the Hon'ble Apex Court, despite the fact that such a course of action was open to them.

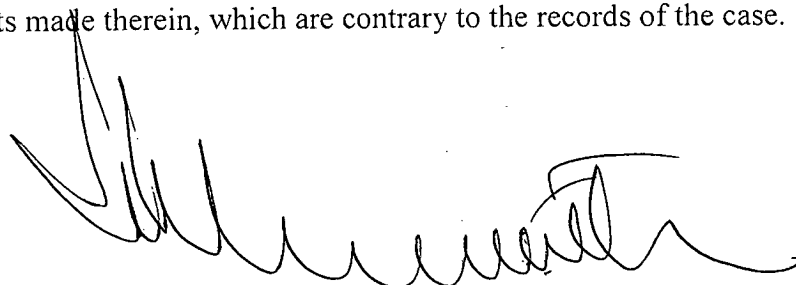
In view of the above, it is evident that the allegations sought to be made against the Deponent to the effect that "The Applicant ..... helped M/S Kitply Industries Ltd in evasion of Central Excise Duty to the tune of Rs. 27 Crores ..... " are baseless and do not have any legs to stand on. These desperate attempts on the part of the Department to malign the dignity of the Deponent are reflective of their malafide intent.

Further, while denying the statements made in the said paragraph 2(a) with regard to the employment of her son, the Deponent reiterates the statements made in paragraphs 3.12 to 3.14 of the Original Application. Be it further stated herein that the Inquiry Officer had also recorded in his findings that "the charge is based only on an inference and there is no direct evidence to show that she had any role to play in the temporary engagement of Shri A. R. Mithran." Considering the fact that M/S Kitply Industries had not even testified for the prosecution, it is evident that the charges framed against the Applicant were baseless. The Deponent further humbly states that upon perusal of the case records, the UPSC in their advice dated 17.01.2006 had also observed that considering the whole sequence of events as brought out hitherto, it was not proved that the Applicant while passing the adjudication order dated 05.12.1996 had committed any irregularity or acted with any malafide motive to show any undue favor to the said firm. Hence, the Deponent cannot be put to fault any way in her official duties, which was reiterated by the UPSC itself

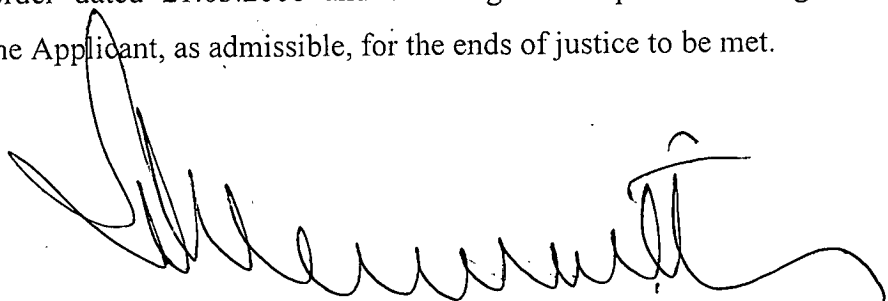
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
23 APR 1  
गुवाहाटी न्यायपीठ  
Guwahati Bench

The Deponent further begs to state that she was serving the department with utmost sincerity and devotion to the satisfaction of all concerned. The Deponent has the highest regard towards the department and never in her career took any undue advantage of her position for her personal benefits. Moreover, the Inquiry Officer too held that all the three Articles of Charge against the Deponent as not proved.

7. That, the statements made in paragraphs 2(b) to 2(k) of the Written Statement being mere repetitions of the advice of the UPSC, the Deponent refrains from making any comments thereon. The Deponent, however, denies all statements and averments made therein, which are contrary to the records of the case.

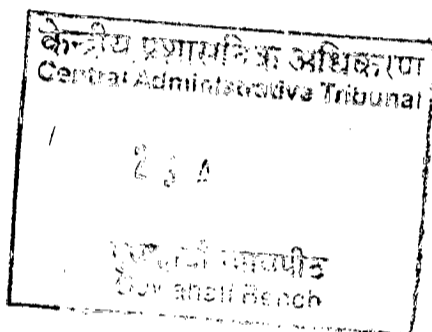


8. That, with regard to the statements made in paragraphs 3, 4, 5 and 6 of the Written Statement, the Deponent has no comments to offer.
9. That, the statements made in paragraph 7 of the Written Statement are totally irrelevant. In fact, the impugned order has been passed by the Disciplinary Authority without due application of mind, totally ignoring the findings of the Inquiry Officer and also the facts and evidences on record.
10. That, while categorically denying the statements made in paragraphs 8 and 9 of the Written Statement, the answering Respondent reiterates the statements made in paragraph 6 of the instant Rejoinder. It is pertinent to note that the Inquiry officer after appreciating all the evidences on record had conclusively held that none of the charges framed against the Applicant could be proved.
11. That, while categorically denying the statements made in paragraphs 10 to 15 of the Written Statement, the Deponent firmly reiterates the statements made in the foregoing paragraphs of the instant Rejoinder. The Deponent states that the impugned order is null and void ab initio on the ground of having been passed in violation of the principles of natural justice in as much as it has been passed without due application of mind and relying merely on the advice of the authority, which neither gave a hearing to the Deponent nor appreciated the facts and evidence on record.
12. That, the Deponent has no comments to offer on the statements made in paragraph 16 of the Written Statement.
13. That, while denying the statements made in paragraph 17 of the Written Statement, the Deponent begs to state that the Disciplinary Authority in a high handed and arbitrary exercise of its power, most deliberately and willfully refused to consider the findings of the Inquiry Officer, which was reached after taking into consideration all necessary oral and documentary evidences, and instead imposed a penalty on the Deponent after acquiring advice from the U.P.S.C, which is in gross violation of the established principle of natural justice. The Deponent humbly reiterates that the Hon'ble Apex Court has also held that 'suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding'. In the instant case, the Authorities have resorted to substituting suspicions into proof and have illegally imposed the punishment on the Applicant. As such, it is a fit case where Your Lordships may be pleased to intervene into the matter and grant appropriate, adequate relief to the Applicant by setting aside the impugned order dated 21.03.2006 and directing the respondents to grant full pension to the Applicant, as admissible, for the ends of justice to be met.



14. That the statements made in this paragraph and those made in paragraphs 1, 2, 3, 4, 5, 6 (partly), 7 (partly), 8, 9, 10, 11, 12, 13 are true to my knowledge and those made in paragraphs 6 (partly), 7 (partly) being matters of records are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this affidavit on this the 23<sup>rd</sup> day of April, 2008 at Guwahati.



DEPONENT

Identified by me

(K. Barthakur)

Advocate

Solemnly affirmed and declared before me by the Deponent, who is identified by R. S. Chowdhury, Advocate, Guwahati on this the 23<sup>rd</sup> day of April, 2008 at Guwahati.

ADVOCATE

Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCHMotin Uddin Ahme  
M.A., B.Sc., LL.B.  
Addl. Central Govt. Standing Coun  
Guwahati Bench (CAT)IN THE MATTER OF :

O.A. No.73/2007

Mrs L.R.Mithran

.....Applicant

- Versus -

Union of India &amp; Ors.

.....Respondents

- AND -

IN THE MATTER OF :Written statement submitted by the Respondents No. 2  
(UPSC)WRITTEN STATEMENT

The humble answering respondents  
submit their written statement as  
follows :

1. That I, Asok Kumar Mandal, s/o late  
Jitendra Nath Mandal, aged about 59 yrs.

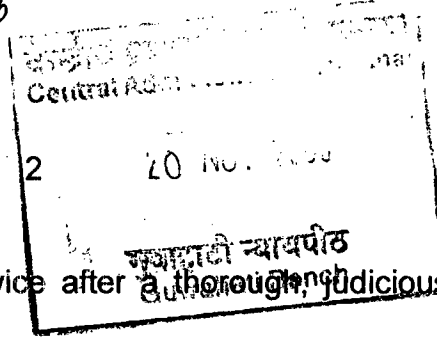
and Respondents No: 2 (Re) in the above case and I have gone through  
a copy of the application served on me and have understood the contents  
thereof. Save and except whatever is specifically admitted in the written  
statement, the contentions and statements made in the application may  
be deemed to have been denied. I am competent and authorized to file  
the statement on behalf of all the respondents.

2. That with regard to the statements made in paragraphs 2 of  
the Application, the answering Respondents beg to state that the same is

Received on 20/11/08  
M. K. Kumar Dohi

Asok Kumar Mandal  
A.K. Mandal  
Dy. Commissioner  
Central Excise, Guwahati

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denied. The Commission tendered advice after a thorough, judicious independent consideration of all relevant facts and circumstances of case, findings of the inquiry officer, evidence on record, documents made available by the Ministry, representations of the charged officer etc. The advice of the Commission is self contained and self explanatory. There is no violation of Article 320 of the Constitution on the part of the answering Respondents and all the necessary report as to the work done by the Respondents in the year was placed before the Hon'ble President of India as provided under Article 323 of the Constitution of India. The duty to consult with the Commission is not mandatory but directory and absence of such consultation will not be invalid or illegal on the part of the Union with reasons. Further more, it is pertinent to mention here that the Commission are only an advisory body and the action and decision have been taken by the Govt. and that the Commission have been impleaded in the case unnecessarily.

3. That with regard to the statements made in paragraphs 1,6 & 7, of the application, the answering Respondents do not admit anything except which are made in para 2 of this reply and which are beyond the records and without any rational/legal foundation. The applicant is put to strict proof thereof. All the Constitutional check on any administrative arbitrariness were taken into consideration.

4. That this reply has been made bona fide and for the ends of justice and equity.

In the aforesaid premises, it is therefore  
humble prayed before this Hon'ble Tribunal  
that the present application filed by the applicant  
may be dismissed.

A.K. Mandal-II  
Dy. Commissioner  
Central Excise, Guwahati  
Asox Kamore Mandal

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**VERIFICATION** 6 NOV 2008

I, Asok Kumar Mandal  
Son of Late Jitendranath Mandal aged about 59  
years, resident of Brahmaputra Apartment, Naranga  
working as Deputy Commissioner, C. Ex. Guwahati Div.  
duly authorized and competent officer of the answering respondents  
to sign this verification, do hereby solemnly affirm and verify that the  
statements made in Paras 2 & 3 are true to my knowledge,  
belief and information and those made in Para — being  
matters of record are true to my knowledge as per the legal advice  
and I have not suppressed any material facts.

And I sign this verification on this 30th day of August 2008  
at Guwahati

Asok Kumar Mandal

A.K. Mandal-II  
Dy. Commissioner  
Central Excise, Guwahati