CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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	ther Papers	
11. Memo	of Appearance	
12. Additi	ional Affidavit	
13. Writte	en Arguments	
14. Amen	ndement Reply by Respondents	
15. Amen	ndment Reply filed by the Applica	ant\
16. Coun	iter Reply	

SECTION OFFICER (Judl.)

OWNER TO THE WORLD

OPDERSSHEET

2. Mise Petition No. 3. Contempt Petition No. 4. Review Application No. Applicant (SI Himanyahu Payu Cahavs Union of India & Ors Advocate for the Applicant (S) M. Chanda, S. Nath "Ms.: M. Dulla "Advocate for the Respondent (SA. Castl. Ca. Baidha
4. Review Application No. Applicant (S) Himangohn Rama Cahays Union of India & Ors Advocate for the Applicant(S) M. Chanda, S. Nath : Mrs., Le. Dulla
Applicant (S) Himangohn langu Cahevs Union of India & City Advocate for the Applicant (S) M. Chanda, S. Nath Whi, Le. Mille
Advocate for the Applicant(S) M. Chanda, S. Nath Whs., Le. Brille
a cace Co Breits ma
Widerocate for the Respondent (S)
Brder of the Tribunal
Notes of the Recitary Date

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This enclosive is in form is their F Fr Rs SW-Dated 5 - 4 - 04

155.07 The case of the applicant is that the 18 working as Assistant applicant. Commissioner, Central Excise. Where he is serving in the said capacity till now. During his tenure the applicant has granted the benefit of exemption to M/S. Chubwa Tea Estate by declaring digible to get the benefit of exemption on the amount of the Central Excise duty vide 08.07.99, Notification dated exemption was forwarded to the joint Commissioner (Audit) by the applicant. Respondent No.4 withheld the case of refund passed by the applicant. The Respondent no.4 communicated decision of withheld of refund claim with reason. Respondent No.4 cleared similar nature of refund

Conta



Notice & order Sent

to D/Section Bor issuing to R-1+04 by regl. A ID post.

15/07 D/= 24/5/07

1) Deswice report awnited

14,5.07.

Who not bill.

20:7:07

15,5,97

claim of M/S. Kakajan Tea The Respondent No.4 preferred a Review Application before Commissioner (Appeal), which was rejected, vide orderdated 31.01.2006 and action of the applicant was upheld. The Respondents impugned memorandum of charge sheet dated 22/25.09.06 issued to the applicant at the Respondent α f sanctioning refund claim of M/S. Chubwa Tea Estate.

I have heard Mr.M.Chanda learned counsel for the applicant and Mr. G. Baishya, learned Sr.C.G.S.C. for the Respondents. When the matter came up for hearing, counsel for the Respondents has submitted that he like to take instructions, let it be done. Post the matter on 15.6.07.

Issue notice on the respondents.

Vice-Chairman

lm

15.6.07. At the request of learned counsel for the respondents further six weeks time is granted to the respondents to file written statement. Post the matter on 31.7.07.

Vice-Chairman

lm



O.A. No.122 of 2007

Notes of the Registry	Date	Order of the Tribunal
,	31.7.2007	Mr.G.Baishya, learned Sr.C.G.S.C.
00007		wanted time to file reply statement. Four
27.80		weeks time is granted.
no MS Flad.		Post the matter on 30.8.2007.
29.8-07 no 175 2:00.		Tost the matter on 50.0.2007.
		Vice-Chairman
	/bb/	
	, , , , , , , , , , , , , , , , , , , ,	
	8.2007	Mr.G.Baishya, learned Sr.C.G.S.C. is
W/s not biled.	gro	nted three weeks further time to file
- DAY	rep	ly statement.
19.9.87		Post on 20.9.2007.
		Vice-Chairman
/bl	b/ 10.07	
<u>. </u>	1	nsidering the issue involved in the O.A
WIS not bilder.	1	is admitted. Four weeks time is granted
Who not biled. the O.A is to the res		pondents to file written statement.
7.11.01	Po	st on 8.11.07 for order.
e e e e e e e e e e e e e e e e e e e		Vice-Chairman
3	pg	
, 3		
08.11.	07	Counsel for the applicant is present.
:		Written statement has not been filed as yet. On
	'	pehalf of the Respondents four weeks time is
WKs not biled.		granted to file written statement as a last
-	•	chance.
WKs not biled.		
Ų ·		Call this matter on 7.12.07.
	,	
Lm		Member(A)

- 47. 122/07



07.12.2007

Despite several opportunities given to the Respondents, no written statement has been filed in this case.

Subject to question of laws to be examined at the time of hearing, this case is admitted and set for hearing on 21.01.2008.

Send copies of this order to all the Respondents in the addresses given in the Original Application.

to D/Section box issuing to resp. mos- 1 to 4 /bb/

201.2.15.01

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08. 5. 5 (3) Hornof 11/08

D/No- 250 to 250 21.01.08

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ley post.

18/108. D/NO-330-3378
28/1108. Dt=31/01/08

6-2-2008

Written statement biled on behalt of The respondents. (Khushiram) Member (A) (M.R.Mehanty) Vice-Chairman

Mr S.Nath, learned counsel for the Applicant is present. In this case no written statement has been filed by the Respondents.

The Respondents department should cause production of the disciplinary proceeding records at the hearing of this case, which is now posted to 08.02.2008.

Call this matter on 08.02.2008 for hearing. Send Copies to the Respondent

(Khushiram Member(A)

(M.R. Mohanty) Vice-Chairman 08.02.2008 On the prayer learned counsel appearing for both the parties call this matter on 13.03.2008.

Puc à ablen recired from in office of the Chief Commission Central Excise & Coustom Shillog Zone, N.E. Legion regarding address of 14. R. Sund the Then

Assistant Commissioner Excise Tinsulcia How he has deen bansfersed

to Central Excise Ranchi 200ml. Could before the Hindle

Khushiram) (M.R.Mohanty) Member (A) Vice-Chairman

Call this matter on 11.04.2008.

(M.R.Hohanty) Vice-Chairman

Call this matter on 04.06.2008.

count for favour or ordus.

(Khushiram) Member (A)

Vice-Chaim

WK Kiled

04.06.2008

On the prayer of Mr M. Chanda learned Counsel appearing for Applicant (made in presence of Mr G Baishya, learned Sr. Standing Counsel for the Union of India), this matter stands adjourned to be taken up on 16.06.2008,

Member (A)

(M.R. Mohanty) Vice-Chairman

nkm

On the prayer of Mr.M.Chanda, learned counsel appearing for the applicant (made in presence of Mr. G. Baishya, learned Standing Counsel for the Respondents) this case stands adjourned to be taken up for hearing on 11.08.2008.

Khushiram Member(A)

(M.R.Mohanty) Vice-Chairman

lm,

Q

11.08.2008

Mr.M.Chanda, learned counsel appearing for the Applicant and Baishya, learned Sr. Standing Counsel for the Union of India are present.

Call this matter on 15.9.2008 for hearing.

> (M.R.Mohanty) Vice-Chairman

he case is ready 500 hiaving

lm

8.08.08.

15.09.2008

On the prayer of Mr.G.Baishya, learned Sr. Standing counsel (made in presence of Mr.M.Chanda, learned counsel appearing for the Applicant), hearing of this case stands adjourned to be taken up on 12.11.2008.

case is izeach too

11:11:08.

case is neady hearing.

(Khushiram) Member (A)

(M.R.Mohanty) Vice-Chairman

/bb/

12.11.2008

Mr.M.Chanda, learned appearing for the Applicant is present. On the prayer of Mr.G.Baishya, learned Sr.Standing Counsel appearing for the Respondents, call this matter on 16.12.2008 for hearing.

(S.N. Shukla) Member(A).

(M.R. Mohanty) Vice-Chairman

15.12.08.

lm

7

16.12.2008 Mr. M. Chanda, learned counsel appearing for the Applicant is present. Mr. G. Baishya, learned Sr. Standing counsel appearing for the Respondent's Organization (Central Excise) is also present.

Mr. M. Chanda, learned counsel appearing for the Applicant states that, MP No.92 of 08 has been filed by the Applicant to call for certain records from the custody of the Respondents. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents undertakes to file an objection to the said M.P.No.92 of 08 in course of the day. It is stated by Mr.M.Chanda, learned counsel for the Applicant that copy of the said written objection to M.P.No.92 of 08 has already been served on him.

In the aforesaid premises, Mr. M. Chanda, learned counsel appearing for the Applicant seeks an adjournment to file rejoinder in M.P.No. 92 of 08.

Call this matter on 20.01.2009.

(S.N.Shukia) Member(A) (M.R. Mohanty)
Vice- Chairman

lm

24,2,09,

The case is nearly

20,1:09 Bruk is vot available List on 25,2-09.

00

25.02.2009 Call this matter on 30.03.2009 along with O.A.No.159 of 2008.

(M.R. Mohanty) Vice- Chairman

-lm

O.A. 122 of 08

25.02.2009

Mr. M. Chanda, learned appearing for the Applicant prays to list this matter during 2nd half of April 2009. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents prays that this matter of 2007 may be listed during 16.03.2009 to 27.03.2009; when Division Bench is available. Mr. M. Chanda, learned counsel for the Applicant states that he has got personal difficulty during 2nd of March 2009 and that therefore, this matter may not be listed before the Division Bench 16.3.2009 during to 27.03.2009. Since learned counsel appearing or the Applicant is in difficulty, this matter may be listed on 21.04.2009.

> (M.R.Mohanty) Vice- Chairman

lm

ne case is ready 21.04.2009

q.

01.06.09

Call this matter on 2nd June 2009 for hearing.

(M.R.Mohanty) Vice-Chairman

lm

02.06.2009

Call this matter on 29.07.2009.

the case is nea

/bb/

(M.R.Mohanty) Vice-Chairman

29.07.2009 On the prayer of learned counsel for both the parties, call matter on 21.08.2009 hearing.

(M.K. Chaturvedi) Member(A)

(M.R.Mohanty) Vice-Chairman

/ lm /

The case is ready

15.10:09

The case is reachy boor hearing.

12.12.09

Apoli Rejornder

film by im Applian
Copy Served

The case is ready for heaving.

21.08.2009 On the prayer of the counsel for both the parties, call this matter 16.10.2009.

> (M.K.Chaturvedi) Member (A)

(M.R.Mohanty) Vice-Chairman

/bb/

16.10.2009

Call this matter on 07.12.2009.

(M.K.Chaturvedi) Member (A)

M.R.Mohanty Vice-Chairma

/lm/

07.12.2009

List the matter on 08.01.2010.

(Mukesh Kumar Gupta) Member (J)

/im/

8.1.2010

Both sides are ad-idem, that instead of deciding the claim laid in present O.A on merits the same be disposed of direction to the Respondents to complete Departmental proceeding initiated vide charge memo dated 25th September 2006 (Annexure6) within a period of three months from the date of receipt of this order positively.

It is expected that Respondents will abide by the undertaking as noticed herein above.

O.A. is accordingly, disposed of.

raised by contentions Applicant remains unadjudicated and open to challenge, in case need arises.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

/lm/

us. M. Das, St. Casc 13.01.10

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IN THE CENTRAL ADM**ENTS** TRIBUNAL Guwahati Bench

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 122 /2007

Shri Himangshu Ranjan Saha

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

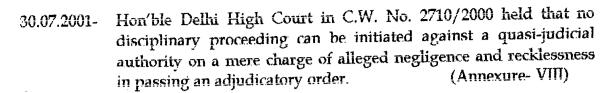
Applicant is serving as Asstt. Commissioner, Central Excise at Tinsukia, where he joined on 07.09.05 from the office of Dibrugarh Central Excise Commissionerale.

- 10.05.2005-Applicant in his quasi-judicial capacity granted benefit of exemption of central excise duty to M/S Chubwa Tea Estate in terms of Govt. notification dated 08.07.99, said exemption was forwarded to the Joint Commissioner (Audit) by the applicant.
- 25.07.2005-Respondent No. 4 withheld the case of refund passed by the applicant. (Annexure - I)
- 27.06.2005-Office of Respondent No. 4 communicated decision of withheld of refund claim with reason. (Annexure-II)
- 16.05.2005-Respondent No. 4 surprisingly hold M/S Kakajan Tea Estate, P.Q. Moriani, Dist-Jorhat, Assam eligible for clear of similar nature of claim without any objection. (Annexure-III)
- 03.11.2005-Respondent No. 4 cleared similar nature of refund claim of M/S Kakajan Tea Estate. (Annexure-IV)
- Respondent No. 4 preferred a Review Application before 31.01.2006-Commissioner (Appeal), which was rejected vide order dated 31.01.06 and action of the applicant was upheld. (Annexure- V)
- 22/25.09.2006-Impugned Memorandum of charge sheet dated 22/25.09.06 issued to the applicant at the instance of Respondent No. 4 for sanctioning refund claim to M/S Chubwa Tea Estate.

(Annexure- VI)

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

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27.02.2006- Similar claims were sanctioned by the same Commissioner in respect of Naupak Tea Estate and Muttarpore Tea Estate.

(Annexure- IX Series)

O4.07.2006- Hon'ble CESTAT, Kolkata vide order dated 04.07.06 held that the Assistant Commissioner cannot deny the applicants of their due claims and rejected the grounds of revenue. (Annexure- X)

22.09.2006- Respondent No. 4 directed the applicant to dispose of similar cases as per decision of the Hon'ble CESTAT. (Annexure- XI)

Hence this Original Application.

PRAYERS

- 1. That the Hon'ble Tribunal be pleased to declare the initiation of disciplinary proceedings against the applicant as illegal and void-ab-initio and be pleased set aside and quash the impugned memorandum of charges No. F. No. C. 14011/27/2006-Ad.V/4725 dated 22/25.09.2006 (Annexure-VI).
- 2. Costs of the application.
- 3. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

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

- 1. That the Hon'ble Tribunal be pleased to stay operation of the impugned memorandum of charges No. F. No. C. 14011/27/2006-Ad. V/4725 dated 22/25.09.2006 (Annexure- VI) till disposal of the original application.
- That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

Alwayshe Rn. Sela.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Title of the case

O.A. No. 122

Shri Himangshu Ranjan Saha.

: Applicant.

-Versus-

Union of India & Ors.

: Respondents.

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14 15. 16-17-

48-62 63-137 138-165.

Filed By:

Advocate

Date: 14.05.07

Hunaugehr L. Selo.

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

O.A. No. 122 /2007

BETWEEN:

Shri Himangshu Ranjan Saha.

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

-AND-

Applicant.

1. The Union of India.

Represented by the Secretary to the Government of India.
Ministry of Finance,
Department of Revenue.
North Block, New Delhi-110001.

- 2. Central Board of Excise and Customs,
 Govt. of India,
 Through it's Chairman, North Block,
 New Delhi-110001.
- 3. The Chief Commissioner
 Central Excise and Customs,
 Shillong Zone,
 3rd Floor, Crescens Building,
 M.G. Road, Shillong-793001.
- The Commissioner,
 Central Excise, Dibrugarh,
 Milan Nagar, Lane 'F',
 P.O- C.R. Building, Dibrugarh- 786003.

...... Respondents.

DETAILS OF THE APPLICATION

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

Heinengshe Rr. Saho.

This application is made against the impugned Memorandum No. 55/2006 issued from the office of the respondent No. 1 vide F. No. C. 14011/27/2006-Ad. V/4725 dated 22/25.09.2006 (Annexure- VI), whereby some charges of misconduct have been alleged in an illegal manner against the applicant and a disciplinary proceeding there upon has been proposed to be conducted against the applicant.

2. <u>Jurisdiction of the Tribunal:</u>

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

3. <u>Limitation:</u>

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

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- Central Excise department in July 1976 and thereafter promoted as Superintendent in the year 1990. He served in different places in the capacity of Inspector as well as Superintendent in the Customs and Central Excise department and on the basis of his satisfactory performance, he was eventually promoted to the post of Asstt. Commissioner in Group-A service in the Customs and Central Excise department on 10.12.2002 and posted at Dibrugarh, Central Excise Commissionerate office on 18.12.2002. Subsequently, he was transferred to Tinsukia Central Excise Division in

Hemonsku R. Sels.

August 2005 and joined on 07.09.05 as Assistant Commissioner of Central Excise, where he is serving in the said capacity till now.

That your applicant begs to state that during his tenure at Dibrugarh 4.3 Central Excise Division the applicant has granted the benefit of exemption to M/S Chubwa Tea Estate (Tata Tea Ltd.) P.O- Chubwa Dist- Dibrugarh by declaring eligible to get the benefit of exemption on the amount of the Central Excise duty covering the period from 08.07.99 to 28.02.2003 in terms of Govt. Notification No. 33/99 C.E dated 08.07.1999 and vide order bearing No. DIB/DIV/REF/ACD/01/2005-06 dated 10.05.2005. However the said order of declaring eligibility is provisional subject to outcome of findings of pre-audit. The said order dated 10.05.2005 was subsequently forwarded by the applicant to the Joint Commissioner (Audit) Central Excise, H.Q. Dibrugarh with a copy to the Commissioner, Central Excise, Dibrugarh for information vide letter No. C. No. V (18) 09/REF/ACD/ 2004/1777-80 dated 11.05.2005. Again vide letter No. C. No. V (18) 09/REF/ACD/2004/1834 dated 16.05.2005 the applicant submitted the particulars of the refund file for pre-audit as per the norms fixed in terms of letter containing instructions bearing No. C. No. II (30) 4/MCWD/ HQRS-AUDIT/DIB/03/2678-82 dated 18.03.2003. Surprisingly, Superintendent (Audit Branch) of Dibrugarh Central **Excise** Commissionerate, informed the applicant that the Commissioner of Central Excise, Dibrugarh is pleased to withhold pre-audit clearance in respect of the claim of Chubwa Tea Estate on the ground the said claim has been filed after the period envisaged in the notification No. 33/99-CE dated 08.07.99 and also cited the reference of the Hon'ble Supreme Court case of M/S Ginni Filaments, wherein it is held that exemption notification has to be read strictly so far as eligibility is concerned and further stated that the ratio of the said judgment of the Hon'ble Supreme Court is squarely applicable to the facts of the refund claim. The applicant after receipt of the aforesaid communication bearing letter No. C. No. V

Heinaugs he Ro. Lelo.

(14) 19/Pre-Audit/DIB/2005/193 dated 27.06.2005 submitted a detailed reply vide letter bearing No. C. No. V (18) 09/REF/ACD/2004/2257 dated 29.06.2005 wherein the applicant given the detailed explanation quoting the relevant provision of the Covt. instructions, rules, notification of the CBEC, New Delhi, Govt. of India. The applicant also stated in his letter dated 29.06.05 that he is receiving regular reminder with copy to the Chief Commissioner, Shillong and Commissioner, Dibrugarh from the assessee to clear the refund otherwise interest have to be paid as per their claim dated 28.06.05 received on 29.06.05 and under the above circumstances the applicant after proper verification when found that the said unit fulfilled all the norms and criteria for grant of eligibility for exemption of the refund of the amount on account of Central Excise duty paid as per notification No. 33/99 CE dated 08.07.99. It is also relevant to mention here that the Tata Tea Ltd. vide their letter dated 28.06.05 issued another reminder to the applicant treating claim of overall interest @ 10 % per annum which will stand to Rs. 7,84,906/- under such circumstances the applicant after detail scrutiny of the Tata Tea Ltd. declared the eligibility for grant of exemption on account of Central Excise Duty paid in terms of notification dated 08.07.99. Under such circumstances the applicant declared the eligibility for grant of exemption after giving natural justice to the Assessee i.e. M/S Chubwa Tea Estate. However, the Joint Commissioner of the office of the Commissioner of Central Excise, Dibrugarh vide letter bearing No. V (14) 19/Pre-Audit/DIB/2005/8670 dated 25.07.2005 informed the applicant regarding the observation of the Commissionerate. However, in the conclusion it is stated that the applicant is required to pass an order in merit keeping in view the aforesaid position of law and requested to ensue that the principle of natural justice are not violated.

It is relevant to mention here that the applicant being Asstt. Commissioner of the Dibrugarh Central Excise Division is required to pass the order in quasi-judicial capacity keeping in mind the norms,

Heinangshe Rn. Salo.

procedures and the requirement of principle of natural justice. However applicant being fully satisfied, granted the refund to M/S Chubwa Tea Estate, a concern of Tata Tea Ltd obtaining undertaking from the claimant to refund the amount to the effect that they shall, pay the entire amount, in the event of Appellate Commissioners decision goes in favour of the department.

Copy of the letter dated 25.07.05 and 27.06.05 are enclosed herewith as **Annexure- I and II** respectively.

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

Copy of the letter dated 16.05.05 and order dated 03.11.05 are enclosed herewith as <u>Annexure-III and IV</u> respectively.

4.5 That it is stated that the Respondent No. 4 preferring a review application before the Commissioner, Customs and Central Excise (Appeals), Cuwahati against the order of refund passed by the Applicant in favour of M/S Chubwa Tea Estate. However, the said Review Application has been rejected by the Commissioner (Appeals), Guwahati vide Order No. 10/CE (A)/CHY/06 dated 31.01.2006. It is relevant to mention here that Commissioner (Appeals) specifically held in para 6 and 7 of the order that the appeal is frivolous and as a result the present case is a misuse of

Heriengthe For. Sala,

machinery and such tendency needs to be curbed. As such it is clear that the Respondent No. 4 acted in a wrong notion to harass the applicant.

Copy of the order dated 31.01.06 is enclosed herewith for kind perusal of the Hon'ble Court and marked as **Annexure-V**.

4.6 That surprisingly, vide the impugned memorandum No. 55/200 issued under No. F. No. C. 14011/27/2006-Ad. V/4725 dated 22/25.09.2006, a departmental proceeding has been initiated against the applicant under Rule 14 of CCS (CCA) Rules 1965, wherein some charges have been alleged against the applicant which runs as follows; -

"STATEMENT OF ARTICLES OF CHARGES

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

2. By the aforesaid act, the said Shri H.R. Saha, Assistant Commissioner, Central Excise. Tinsukia failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant. He, thus contravened Rule 3 (1) (i), (ii) & (iii) of

Henrangelie L. Sala

CCS (Conduct) Rules, 1964 as well as an act of willful insubordination or disobedience to a lawful and reasonable order of a superior."

Copy of the impugned memorandum dated 22/25.09.2006 is enclosed herewith for perusal of the Hon'ble Tribunal as <u>Annexure-VI</u>.

That on receipt of the impugned memorandum dated 22/25.09.06 stated 4.7 above, the applicant immediately submitted a detailed reply to the President of India on 15.11.2006 wherein the applicant has submitted in details about the propriety of his decision granting eligibility for exemption in favour of M/S Chubwa Tea Estate in terms of Govt. of India's Notification No. 33/99-CE dated 08.07.99 and further quoted the order of Joint Commissioner dated 25.07.05 wherein he has been directed to pass an order on refund claim on merit. The applicant also explained that after detailed consideration of the claim for refund of M/S Chubwa T.E and after being fully satisfied that the period of limitation, passed necessary order granting eligibility in favour of M/S Chubwa T.E. in exercise of power conferred on the applicant under Section 33 of the Central Excise Aci 1944. It is pertinent to mention here that as per relevant provision of the Central Excise Act 1944, if the department is aggrieved by any order passed in the case of claiming refund, the authority is at liberty under Section 35 E of Central Excise Act to prefer an appeal before the Appellate Authority but unfortunately in the instant case, at the instance of Respondent No. 4, the authority has acted with malafide intention and instead of availing of the provision of law, has resorted to initiating the impugned disciplinary proceeding aforesaid against the applicant. As such the issuance of the memorandum of charges dated 22/25.09.06 is malafide, motivated, unfair, arbitrary and opposed to the procedure established by law and hence liable to be set aside and quashed.

Heinaugher La. Sala,



Copy of reply dated 15.11.2006 is annexed hereto for perusal of Hon'ble Court as <u>Annexure-VII.</u>

That the applicant most respectfully begs to state that the applicant has passed the alleged order on refund claim of M/S Chubwa Tea Estate in exercising his quasi-judicial power vested upon him and as such the Authority cannot find fault with the applicant even assuming but not admitting that the order passed by the applicant in favour of M/S Chubwa T.E. is not in conformity with rules. It may, at best be treated as erroneous decision made by the applicant in exercise of his quasi-judicial power and does not warrant for initiation of disciplinary proceeding whatsoever.

It is relevant to mention here that in Union of India -Vs- M/S Dolly Saxena, the Division Bench of the Hon'ble Delhi High Court has held (C.W. 2710 of 2000 decided on 30.07.2001) that- no disciplinary proceeding can be initiated against a quasi-judicial authority on a mere charge of alleged negligence and recklessness in passing an adjudicatory order. Such proceedings can be initiated only when it is shown that undue favour in the matter has been done for extraneous consideration by such authority.

The instant case is not even a case of negligence or recklessness and not to speak of undue favour or extraneous consideration whatsoever but the applicant discharged his duties in conformity with rules only. Even in spite of that the respondents have initiated the impugned disciplinary proceeding against the applicant which is opposed to the settled position of law. As such the action of the respondents is liable to be declared as illegal and void-ab-intio.

Copy of judgment dated 30.07.2001 of Delhi High Court is annexed hereto for perusal of Hon'ble Court as <u>Annexure-VIII.</u>

Hemorgeline Rom. Sela.

- 4.9 That the applicant most respectfully begs to submit that the respondents allegations against the applicant are-
 - (a) that the claim of the assessee in question was sanctioned by the applicant in violation of the directions contained in letter dated 27.06.05 (Annexure- II) whereby it was informed to the applicant that the pre-audit clearance of the said claim was withheld by the Commissioner of Central Excise. Dibrugarh on the ground of limitation, and
 - (b) that the ratio of the judgment of the Supreme Court in the case of M/S Gini Filaments, reported in 2005 (181) ELT-145 was squarely applicable in the instant claim in question which was not followed by the applicant.

But none of the above stated allegations are sustainable. The claim of the assessee in question is not barred by limitation in terms of the rules/notification in force and the case law of M/S Gini Filaments stated above is also not applicable in case of the assessee in question inasmuch as the eligibility order has since been issued earlier on 10.05.05 making the assessee eligible to lodge their claim, which the Commissioner was also aware of. As such the allegations/charges labeled against the applicant are false, concocted, unfounded, malicious, arbitrary and opposed to the settled position of law.

4.10 That the applicant begs to submit further that similar claims were sanctioned by the Deputy Commissioner. Central Excise Division, Jorhat in favour of Napuk Tea Estate and Muttarpore Tea Estate vide orders dated 27.02.06 and in those two cases the Hon'ble CESTAT, Eastern Zone, Kolkata vide order No. A-593/KOL/2006 dated 04.07.06 observed that the Assistant Commissioner cannot deny the applicants of their due claims and rejected the grounds of revenue. The Commissioner, Central Excise,

Heinangske Am. Sala.

Dibrugarh also accepted the said order of the CESTAT with a direction to this applicant vide order bearing No. C. No. V (30) 77/Appeals/8156-60 dated 22.09.06 to dispose of similar cases as per decision of the Hon'ble Tribunal. As such the impugned charges alleged against the applicant are opposed to the standing instructions and hence liable to be set aside and quashed.

Copy of the orders dated 27.02.06 in the case of the Naupak T.E. and Muttarapore T.E., order dated 04.07.06 and letter dated 22.09.06 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure-IX (Series), X and XI respectively.

- That the applicant further begs to submit that the assessee M/S Chubwa Tea Estate in the instant case was found eligible for the benefit claimed by the assessee and any further delay in granting the benefit would attract huge amount of interest which the assessee had already started claiming. As such the order passed by the applicant granting eligibility in favour of the said assessee had already started claiming. As such the order passed by the applicant granting eligibility in favour of the said assessee was not only in accordance with rules but was a step to exclude avoidable payment of interest at high rate. Though Commissioner, Dibrugarh knows the matter of interest but she was silent and has not given any direction to the applicant in this matter, only point raised is time bar which is rejected by the CESTAT, Kolkata vide order dated 04.07.2006.
- 4.12 That it is stated that the legality and validity of the sanctioning order issued in favour of M/S Chubwa T.E by the applicant has been amply established when the review application filed by the Respondent No. 4 against the sanctioning order of the applicant has been rejected by the Commissioner of Customs and Central Excise (Appeals), Guwahati which lends support to the action of the applicant. Following this, the respondent No. 4 became vindictive against the applicant and at her

Heinangshu Kon. Saha,

instance, the impugned memorandum of charges has been issued against the applicant. Not being contented with this, the respondent No. 4 has also managed to get even one transfer order issued simultaneously against the applicant whereby the applicant has been sought to be transferred from Tinsukia to Shillong. The said transfer order has been challenged by filing one OA No. 72/2007, which is pending before this Hon'ble Tribunal.

- 4.13 That the impugned memorandum of charges issued against the applicant is malafide, vindictive, illegal, concocted, unfair and motivated which threatens to affect the career and prospect of the applicant adversely and as such finding no other alternative, the applicant is now approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interest of the applicant by declaring the action of the respondents as illegal and void-ab-initio and quashing the impugned memorandum of charges dated 22/25.09.2006 (Annexure-VI).
- 4.14 That this application is made bona fide and for the cause of justice.

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

- For that, the applicant has granted eligibility in favour of M/S Chubwa Tea Estate in the case of refund claim after examining all the rules and orders in force and being fully satisfied that the said assessee is entitled to get the benefit granted by the applicant, in terms of Govt. of India's notification No. 33/99-CE dated 08.07.99 as a quasi-judicial authority.
- 5.2 For that, the contentions o the respondent No. 4 against the order passed by the applicant have been rejected by the Commissioner (Appeals), Guwahati vide his order dated 31.01.06 which confirms that there is no

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infirmity in passing the order of eligibility by the applicant in favour of the above mentioned assessee.

- 5.3 For that, the applicant passed the order of eligibility in question, in exercise of his quasi-judicial power conferred on him under Section 33 of the Central Excise Act, 1944 and as such his action is in conformity with rules.
- 5.4 For that, it is the settled position of law that no disciplinary proceedings can be initiated against a quasi-judicial authority on a mere charge of alleged negligence and recklessness in passing an adjudicatory order. Such proceedings can be initiated only when it is shown that undue favour in the matter has been done for extraneous consideration by such authority. As such the disciplinary proceedings initiated against the applicant in the instant case lacks jurisdiction and are liable to be set aside and quashed.
- 5.5 For that, the action of the applicant is in conformity with the decision rendered by the Hon'ble CESTAT, Eastern Zone, Kolkata vide it's order No. A-593/KOL/2006 dated 04.07.2006 and direction of the Respondent No. 4 himself.
- Division in respect of the M/S Kakjan Tea Estate, P.O Mariani, Dist-Jorhat, Assam was cleared by the same respondent No. 4 vide letter No. C. No. V (30) 79/Appeals/05/20530 dated 27.09.05 but she has withheld the claims of M/S Chubwa T.E in the instant case on some unsustainable grounds, thereby exhibiting her hostile discrimination in the instant case.
- 5.7 For that, the disciplinary proceedings initiated against the applicant is malafide, vindictive, malicious, unfair, illegal and opposed to the settled position of law. As such, the same is liable to be set aside and quashed.

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6. <u>Details of remedies exhausted.</u>

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

7. <u>Matters not previously filed or pending with any other Court.</u>

The applicant further declares he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

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

- 8.1 That the Hon'ble Tribunal be pleased to declare the initiation of disciplinary proceedings against the applicant as illegal and void-ab-initio and be pleased set aside and quash the impugned memorandum of charges No. F. No. C. 14011/27/2006-Ad.V/4725 dated 22/25.09.2006 (Annexure-VI).
- **8.2** Costs of the application.
- 8.3 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. <u>Interim order prayed for</u>

Hewayshu R. Salo,

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

- That the Hon'ble Tribunal be pleased to stay operation of the impugned 9.1 memorandum of charges No. F. No. C. 14011/27/2006-Ad. V/4725 dated 22/25.09.2006 (Annexure- VI) till disposal of the original application.
- That the Hon'ble Tribunal be pleased to direct the respondents that 9.2 pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

: G.P.O, Guwahati.

10.

11. Particulars of the I.P.O

i) I.P.O No. : 34G652836,

ii) Date of issue 5,4,07. iii) Issued from : G.P.O, Guwahati. iv) Payable at

12. List of enclosures

As given in the index.

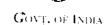
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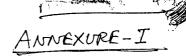
VERIFICATION

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

And I sign this verification on this the 13^{m} day of May 2007.

Himanosla Er. Sake.





OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE

DIBRUGARH

Milan Nagar. Lane F. P. O. : C. R. Building, Dibrugarh - 786 003. Assam el.: 0373-2314081. Fax: 0373 2315257. EDECS: (com74) ____

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

Date: 25/07/2005

To.

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

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

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

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

- The Hon'ble Apex Court's observations in the case of M/s. Ginni Filament, even though made in gelation to a matter of a 100% EOU, has application in respect of exemption notifications in general in so far as the observations, e.g., that an exemption notification has to be read on its own terms, conditions therein cannot be ignored, and exemption notification has to be read strictly so far as eligibility is concerned. cannot be viewed as an order in personam. Besides, similar view had also been taken by the Hon'ble Apex Court in other cases, reported at 1978 (2) ELT J 350 and 1995 (77) ELT 474. Such views of the Hon'ble Apex Count cannot be dismissed summarily.
 - In the case of M/s. Shivdham Industries, reported at 2002 (141) ELT 272, the Tribunal, while observing that an exemption under the Notification No. 33/99-CE, dated 08.07.1999 is not automatically defeated if the refund is not filed within the period of 7 (seven) days, also observed that the claim of refund in any case has been filed within the period prescribed under Section 11B. V
- In the case of M/s. Raghuvar India Ltd., reported at 2000 (118) ELT 311, while dwelling on the issue of limitation where pone is prescribed in the statute, the Hon'ble Supreme Court observed that, "It is not for the court to import any specific period of limitation by implication, where there is really none, though courts may always hold when any such exercise of power have the effect of disturbing rights of a citizen that it should be exercised within a reasonable period." In the case of Corporation Bank, reported at AIR 2000 SC 76. the Supreme Court, on the issue of reasonable period, held that in respect of claim of money, specific period in the Limitation Act should be considered as reasonable time. For your benefit, relevant portions of the Limitation Act, 1963 is reproduced below :-

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

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

the approval of the Commissioner

Superintendent (VIG.). Anital Paciso. Diorniacy.

(M.R. MOHANTY) Joint Commissioner

-17-

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AUDIT BRANCH DIBRUGARH

Dr. Lila:Gogoi Path, Dibrugarh - 786003. Ph No. 0373 - 2312870. Fax No.-0373 - 2315257.

By Spd, monerge

E-mail - Comm74.

ANNEXURE-IL

C.No.: V(14)19/Pre-Audit/DIB/2005/ (0.3)

Date: 27-06-05

To.

The Assistant Commissioner. Central Excise.

Dibrugath.

Sir.

CO CHERTAL COMMISSION!

791

DENVERD!

Subject: Refund claim of Rs. 1, 10, 61.418.00 in respect of M/s Chabwa Tes Estate
- Pre - Audit - Regarding

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

In this connection. I am directed to inform that the Commissioner of Central Excise, Dibrugarh, is pleased to withhold pre-audit clearance in respect of the claim of retund of Rs. 1.10.61,418.00 filed by M s Chubwa T.E. on the ground that the said claim has been filed after the period envisaged in the Notification No. 33.99, dated 08-07-1999. It is also brought to your notice that the Hon'ble Supreme Court in the case of M/s Ginni Filaments, reported at 2005(181) EUT 145 has held that "Exemption Notification has to be read strictly so as eligibility is concerned". The ratio of the said judgement of the Supreme Court is squarely applicable to the facts of this refund claim.

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

Enclo:-As above

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ATTESTED

Superintestant (VIG.), Control Excise, Dibrugarh. Your's faithfully,

Barel 27-06.05

(G.K.Sharma Boral) Superintendent GOVT. OF INDIA

OFFICE OF DEPUTY COMMISSIONER CENTRAL EXCISE DIVISION

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OXIND LIT. 1/1 (62) ELT 241 (MP) 699 (T))**

ORDER ... 105.03.03, Che C Circular No. 772/5/2004 - CSC of the constitute of a feet factory from the

Dated:- Markety by addition of machine Dated:-

M/s Kakajan Tea Estate, P.O. Mariani, Dist. Jorhat, Assam, holder of Central Excise Registration have Certificate No. AABCT0602KXM011 submitted refund claim under the provisions of Notification No. 18 and 18 a 33/99-CE dated 8.7.99 from the period 25.7.99 after said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased install capacity by over 25% in said to have increased in said to have in said to hav terms of Para 2 (b) of the said Notification. And they have also submitted covering documents for a discovering documents for a discovering documents. procuring additional machineries as well as evaluation report from Registered Chartered Engineer.

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

Now, the question before the undersigned whether:

1) Whether the assessee has submitted a statement of duty paid through PLA (Account Current) to (4.3) the jurisdictional Assistant/ Deputy Commissioner by the 7th of the next month in which the duty has been paid from the Account Curerent.

2) The delay in submission of claim is hit by bar of limitation in terms of Section 11B of central

Excise Act 1944.

3) Whether overall installed capacity has increased over 25% of installed capacity.

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

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

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

a) Shivdham Industries (P) Ltd. {2002 (141) ELT 272 (T)}

b) Order No. A-246/Kolknta/2001 in case of Vinay Cement Ltd.

c) Order No. A-319-321/Cal/2001 dated 22.05.2001 in case of K.K. Beverages (P) Ltd.

d) O-J-A No. 38/CE(A) Ghy/04 dated 8.4.2004 in case of M/s Dufflaghar T.E., M/s Nahotani T.E. & M/s Tarajulie T.E.

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

The Central Board of Excise & Customs, New Delhi, under F.No. 354/B/90-TRU (Pt-II) dated 06 10.99 has entegorically clarified that refunds under Notification No. 33/99-CE does not attract the provisions under Section 11B and does not prescribe tune limit.

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

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

The Ministry's letter F. No. 07/5/2002 - CX6 dated 05.03.03, CBEC Circular No. 772/5/2004 - CX dated 21.01.2004 clarify that there is no requirement of increase in every sections of a tea factory. Increase in installed capacity by over 25% of installed capacity by addition of machineries in any section will nake them eligible for the benefit of exemption in terms of Para 2,(b) of the Notification, No 33/99-CB dated S.7.99. . . de la companya del companya de la companya de la companya del companya de la companya del la companya de la com

the state of the second state of the second second Since, 3 (Three) points as stated earlier have been discussed and found that the assessee have fulfilled all conditions. Now, as per Instruction No. 04/2002 dated 12.04.2004 the jurisdictional Assistant/ Deputy Commissioner required to make a comparative study of installation of additional/new machineries which would result in increase in installed capacity of the unit as specified in Clause 3 (b) of the exemption Notification.

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

On the strength of Paras discussed above, I am of the opinion that the assessee has fulfilled the conditions laid down at Para 2 (b) of the exemption Notification No. 33/99-CE dated 8.7.99 and eligible for exemption weef. 25.07.99 which is the date of commencement of commercial production after installation of additional machineries.

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Copy forwarder for information and necessary action to your of retun-

This also be a closification of

1. The Commissioner, Central Excise, Dibrugarh.

2. The Deputy Commissioner (Audit), Central Excise, Dibrugarh.

3. M/s Kakajan T.E., P.O. Nakachari, Dist, Jorbat, Assam (11)

4. The Superintendent, Central Excise, Mariani Range. Central 1

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GOVE OF INDIA

OFFICE OF THE DEPUTY COMMISSIONER CENTRAL EXCISE DIVISION::JORHAT

Station Godown Road, Jorhat 785001

Phone/Fax: 0376 2320006 E-mail:div7403 & cenexjor@sancharnet.in

Amounto.

ORDER NO.69

Dated: Place: Jorhat

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

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

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

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

In view of the above, I do hereby sanction refund provisionally amounting to Rs 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only clubbing together all the monthly claims for the period from 25,07,1999 to 28,02,2003 to M/s

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Kakajan T.E., P.O. Mariani, Dist. Jorhat, Assam, in terms of the Notification No. 33/99-CE dated 208.07.1999 covering the period from 25.07.1999 to 28.02.2003 subject to post-audit.

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

I order accordingly.

(M.C. HAZARIKA) DEPUTY COMMISSIONER

C.No.V(18)112/ACJ/REF/2004/ 41083

Dated: 3/11/05

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

(M.C. HAZARIKA)
DEPUTY COMMISSIONER

C.No.V(18)1 2/ACJ/REF/2004/ 4084-86,

Dated: 3/11/05

Copy forwarded for information and necessary action to:

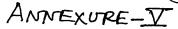
1. The Commissioner, Central Excise, Dibrugarh.

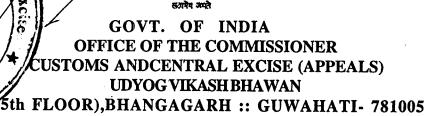
2. The Joint Commissioner (Audit), Central Excise, Dibrugarh along with copy of PLA, TR-6 and statement of duty paid for the period from 25.07.199 to 28.02.2003.

3. The Assistant Chief Accounts Officer, Central Excise, Dibrugarh.

(M.C. IÌÁZARIKA) DEPUTY COMMISSIONER







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

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

Date 31.1.06

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

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

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

- 1.(a) A revision application under Sec. 35 EE of the Central Excise Act, 1944 shall lie to the Central Govt. and may be addressed to the under Secretary ,Revision Application Unit, Govt. of India, Ministry of Finance, Deptt. of Revenue, 4th floor, Jeevan Deep Building, Sansad Marg, New Delhi-110001 in respect of an order passed by the Commissioner (Appeals) under Sec. 35A of the Central Excise Act. 1944 where such orders are of the nature referred to in the first provisio to Sub-Section (1) of Sec. 35B of the Central Excises Act, 1944. These orders relates to cases of goods lost in transit or during processing, rebate of duty of excise on goods exported or on excisable materials used in the manufacture of goods exported or goods imported outside of India (except to Nepal and Bhutan) without payment of duty.
- (b) In terms of Sub-Section (3) of Sec.35EE ibid the application to the Central Government shall be filed within three months from the date of communication of the order to the applicant against which the application is being filed.
- (c) The application shall be made in from EA-8 in duplicate and shall be filed in themanner

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

- 2(a) In any other case, the appeal shall lie under section 35B of the Central Excise Act, 1944 to the Central Excise and Service Tax Appellate Tribunal at Bimboo Villa, 169, A.J.C. Bose Road, Kolkata -700014 within three months from the date on which the order sought to be appealed against is communicated.
- (b) The appeal to the Appellate Tribunal should be filed in Form E.A. 3 in quadruplicate and shall be accompanied by 4 (Four) copies of the order appealed against (one of which at least shall be certified copy) and four copies (one of which at least shall be omrtified copy) of the order of the adjudicating authority.
- The appeal should be accompanied by a fee of (i) Rupees One thougand if the amount of duty and interest demanded, fine or penalty levied is Five lakh rupees or less; (ii) Rupees Five thousand if the amount of duty and interest demanded, fine or penalty levied is more than Five lakh rupees but not exceeding fifty lakh rupees; (iii) Rupees ten thousand if the amount of duty and interest demanded, fine or penalty levied is more than fifty lakh rupees, paid through a cross Bank Draft drawn in favour of the Assistant Register of the Bench of the Tribunal on a Nationalised Bank payable at Kolkata and the demand draft shall be attached to form of appeal.
- (d) Every application made before Appeallate Tribunal (i) in an appeal for grant of stay or for rectification of mistake or any other purpose; or (ii) for restoration of an appeal or an application shall be accompanied by fee of Five hundred rupees.
- (e) The appeal shall be presented in person to the Register or an officer authorhedtto the Registrar, in the office of the Central Excise and Service Tax Appellate Tribunal or shall be sent by Registered post addressed to the Registrar or such authorised officer.
- 3. Court fee stamp of Rs. 2/- in required to be affixed on memorandum of appeal and 0.50 paise on copy of the order appealed against.
- 4. Attention is also invited to Rule covering these and other related matters contained in Central Excise (Appeals) Rules, 2001 and Customs, Central Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

F.NO.

: V(09)2/XAP-37/RA/DIB/2005.

Appellant

: The Assistant Commissioner, Central Excise, Dibrugarh,

Respondent

: M/S. Chubwa Tea Estate.

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

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

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

- 3. The case was posted for hearing on 31.1.06. The appellant vide his letter No. V(2) 5/Appeals /Misc/ACD/2005/263 dated 30.1.06 intimated that the grounds of appeal may be considered in this regard. Copy of the appeal petition was sent to the respondent and they were also asked to appear for hearing on 31.1.06. They submitted written submissions vide their letter dt. 24.1.06 and requested to waive their personal presence.
- 4. I have carefully gone through the case records and respondent's written submissions in lieu of personal hearing. I find that the Commissioner in the Review order did not specify the points arising out of the order which are to be determined by this forum. The Commissioner vide the Review Order directed the Assistant Commissioner to file appeal on the basis of statement of facts and grounds of appeal appended to the order. But no such grounds of appeal determined by the Commissioner was filed with the appeal petition. The review application suggests that the grounds of appeal are filed by the Assistant Commissioner himself. Section 35E(2) requires that Commissioner herself should determine the points on which basis the impugned order is held to be illegal and improper and should specify the points to be determined in appeal. The Assistant Commissioner cannot form the grounds of appeal. The Review Application is liable to be

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set aside on this ground alone. This view is fortified by the Hon'ble Tribunal's decision in the case of Ballarpur Industries Vs CC [2000 (126) ELT 965 (T)].

- I find the impugned order clearly reflects that the refund was granted to the appellant on the basis of Assistant Commissioner's order No. DIV/DIB/Ref/ACD/01/05-06 dated 10.5.05 . It is also recorded in the impugned order that the respondents' eligibility for exemption under Notification No. 33/99-CE dated 8.7.99 as amended was determined w.e.f. 8.7.99 in the order dated 10.5.05. It is not the case of the Assistant Commissioner that the order has been challenged before any legal forum. I also find that the first contention in grounds of appeal is that the Assistant Commissioner erred in relying on the decisions passed by the Hon'ble Tribunal but I do not find that any such decision, has been relied upon-in-the impugned order. This clearly shows that this contention in grounds of appeal is utterly baseless. The other contention in the grounds of appeal are also not sustainable as those are not the subject matter of the order impugned before me. The grounds raised in the Review Application are therefore baseless.
- 6. The Review Application clearly shows that it was filed without application of mind. The Ministry in Circular under F.No.-390/164/92-JC dated 2.12.92 observed that the Tax Reforms Committee chaired by professor Raja J.Chelliah had observed in the Final Report that the Resources of the Department and Tribunal should not be wasted by filing frivolous appeals (and the Ministry desired that tendency to go in for frivolous, appeals be checked. Undoubtedly filing of frivolous appeals as in present case is a misuse of machinery and such tendency needs to be curbed.
- I also find that the Respondent's written submissions filed in lieu of personal hearing are in the matter of delay in submission of refund claim, limitation under the limitation Act, 1963 and contempt for non-implementation of specific orders, directions and decisions of the judicial and higher quasi-judicial authorities none of which is the subject matter of the present appeal. I therefore hold that these submissions are not at all relevant for the present case.

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

Allesfud.

Tustoins & Central Excise TTAHAVUD

C.NO. V(09)2/X/AP-37/RA/DIB/2005/

(AÆPAWAR)

COMMISSIONER

CUSTOMS & CENTRAL EXCISE (APPEALS)

GUWAHATI.

DATE:

The Assistant Commissioner, Central Excise, Dibrugarh.

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

(N.PHUKAN)

SUPERINTENDENT (APPEALS)



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

DATE: 15/6/06

Copy forwarded for information & necessary action to:

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

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

F. No.C.14011/27/2006-Ad.V Government of India
Ministry of Finance
Department of Revenue

ANNEXURE-VI

New Delhi, the 22^{nd} September, 2006

MEMORANDUM No.55/2006

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

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

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

6. The receipt of this Memorandum may be acknowledged.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

(S.P. Roy)

Under Secretary to the Govt. of India

Shri H.R. Saha,

Assistant Commissioner of Central Excise.

(Through: Commissioner of Central Excise, Dibrugarh)

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

(ii) CVC' advise.

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

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

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

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ANNEXURE-II

3

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

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

ANNEXURE-I -31-

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

1. Copy of the refund claims dated 12.09.2004 & 20.09.2004, addressed to the Assistant Commissioner, Central Excise, Dibrugarh by M/s. Chubwa Tea Estate

2 sheet

2. Copy of letter C.No. V(18)9/REF/ACD/2004/1834, dated 16.05.2005 of Shri H.R. Saha, Assistant Commissioner. Central Excise, Dibrugarh, addressed to the Joint Commissioner (Audit), Central Excise, Dibrugarh

4 sheets

3. Copy of letter C.No. V(14)19/Pre-Audit/DIB/2005/193, dated : 27.06.2005 of the Superintendent (Audit), Central Excise, Dibrugarh, communicating the order of the Commissioner. under which pre-audit was withheld

1 copy

Copy of letter C.No. V(18)9/REF/ACD/2004/2257, 4. 14sheets dated 29.06.2005 of Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh, addressed to the Commissioner. Central Excise, Dibrugarh

1 copy

5. Copy of letter C.No. V(14)19/Pre-Audit/DIB/2005/8670, dated: 25.07.2005 of the Joint Commissioner (Audit), Central Excise. Dibrugarh, addressed to Shri H.R. Saha, Assistant Commissioner, Central Excise, Dibrugarh

4 sheets

6. Copy of the Order No. 14/REF/05-06, dated 05.08.2005, passed by the Assistant Commissioner, Central Excise, Dibrugarh

1 copy

7. Copy of letter C.No. II(8)22/VIG/COMMR/DIB/05/9614, dated : 11.08.2005, under which explanation of Shri H.R. Saha. Assistant Commissioner, Central Excise, Dibrugarh is called

5 sheets

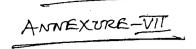
8. Copy of letter C.No. I(11)1/CON/ACD/DIB/2004/2795, dated 17.08.2005 of Shri H.R. Saha, Assistant Commissioner. Central Excise, Dibrugarh, addressed to the Additional Commissioner (P&V), Central Excise, Dibrugarh

Copy of CBEC Circular No. 809/6/2005-CX, dated 01.03.2005: [pre-audit / post audit instruction procedures]

1 sheets

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GOVERNMENT OF INDIA MINISTRY OF FINANCE: DEPARTMENT OF REVENUE

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

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

Dated: - 15/11/2006

To,

THE PRESIDENT OF INDIA, NEW DELIHI

(THROUGH PROPER CHANNEL)

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

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

Most Respectfully Sheweth,

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

- 2. Respected Sir, I beg to be apologized for requesting to grant me an extension of time vide petitioner's letter C. No. II (9) 2/CONF/ACT/06/8521 dated. 19.10.2006 (Copy enclosed for kind ready reference) for replying to the memorandum.
- 3. The petitioner begs to submit the following reply in defence in terms of Para-2 of the memorandum.
- 3.1 The petitioner straightway denies all the articles of charges referred in Annexure-I, II. The charges are unethical, arbitrary, vindictive and bad in law.
- 3.2. The instant sanction & order for refund of Rs. 77, 52, 409.00 (Rupees seventy seven Lacs fifty two thousand four hundred and nine) only was passed consequent to eligibility order passed on 10/05/05 under Notification No. 33/99-CE dt. 08/07/99 as amended, as the assessee was found eligible for the benefit of exemption enshrined in the notification. The eligibility Order No. DIV/REF/ACD/01/05-06 dated 10/5/05 had been duly endorsed to the Commissioner of Central Excise, Dibrugarh for information and necessary action vide C. No. V (18)09/REF/ACD/2004/1777-80 dated 11 /05/05 (Copy enclosed for kind information). (ANNEXURE-"A")
- 4. Subsequently, by virtue of the aforesaid Eligibility Order, draft sanction order of refund amount of Rs. 1, 10, 61, 418.00 (Rupees one Crore ten lacs sixty one thousand four hundred and eighteen) only was forwarded to the Commissioner of Central Excise, Dibrugarh for Pre-audit before finally

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

- 4.1 Petitioner in reply to this above said letter wrote back to the Commissioner of Central Excise, Dibrugarh explaining that the instant case of refund claim is not barred by limitation and also the case laws referred to above is also not applicable and relevant inasmuch as the eligibility order has since been issued on 10/05/05 making the assessee eligible to lodge their claim. (Copy of letter C.No V(18)09/REF/ACD/2004/2257 dt. 29/06/05 is enclosed for ready reference).(ANNEXURE-"C") It is also informed to the Commissioner that the office of the petitioner is receiving regular reminder from the assessee for clearing their refund otherwise interest has to be paid. One of such reminders of the assessee dated 28.06.2005 is enclosed herewith for kind perusal. (ANNEXURE-"D")
- 4.2.On receipt of the letter from the petitioner, the Joint Commissioner of Central Excise, Dibrugarh of Commissionerate office, Central Excise, Dibrugarh vide his letter C. No. V (14)19/Pre-Audit/DIB/2005/8670 dated 25/07/05 in the last but concluding para observed thus: "You are required to pass an order on merits, keeping in view of aforesaid position of Law. Please ensure that the principle of Natural Justice is not violated" (Copy enclosed).(ANNEXURE-"E") In the same letter in para 2, it is said thus: "In the case of M/s. Shivdham Industries reported at 2002 (141) ELT/272, the Tribunal, while observing that an exemption under the Notification No 33/99-CE dt.08/07/1999 is not automatically defeated if the refund is not filed within the period of 7 (seven) days, also observed that the claim of refund in any case has been filed within the period prescribed under Section 11B".
- 5. In the said letter of the Joint Commissioner dated 25.07.2005, the petitioner has been directed to pass an order on merit. In this context, the petitioner begs to submit that the unit was rendered eligible for the benefit under notification No.33/99 vide eligibility order dated 10.05.2005 & the only alternative which was left before the petitioner is to sanction refund in the wake of passing the eligibility order. All the facts were made known by the petitioner to the Commissioner, but the Commissioner without resorting to the provisions of Section 35E of CEA 1944 returned the file to the petitioner. Therefore, the petitioner begs to submit that the refund has been sanctioned after adjudging the limitation aspect. It is a settled law that there is nothing in the notification to suggest that filing of claim not in time does not bar the claimant to get substantive benefit. In this connection, the judgment of the Hon'ble Tribunal in the case of Vinay Cement Ltd. reported in 2002(147) ELT 724 (Tri-Kolkata) may kindly be perused (Copy enclosed).(ANNEXURE-"F")
- 6. The petitioner further begs to submit that the eligibility order passed by the petitioner, after observing the principles of natural justice has not been challenged and therefore, it has been presumed that the refund is not hit by bar of limitation. Also the petitioner was not directed by the Commissioner to file appeal as per the provisions of Section 35E of CEA 1944 though all facts were brought to the knowledge of the Commissioner of Central Excise, Dibrugarh as are evident from the correspondences received from the Commissionerate Office, Dibrugarh. Further, the petitioner begs to submit that in order to avoid payment of interest to the assessee in the event the assessee approach High Court, the petitioner settled the refund claim as the High Court has jurisdiction to award interest even though the refund does not fall under the purview of Section 11B of CEA 1944. The petitioner begs to state that the refund was released after obtaining proper undertaking from the assessee. (ANNEXURE-"G")
- 7. That Sir, from the above submission it is in evidence that the petitioner being a Quasi-judicial authority has acted in good faith and made required correspondences to the Commissioner of Central Excise, Dibrugarh for obtaining time to time direction/order. And that nowhere the petitioner has shown any slightest negligence, disobedience and dereliction of duty in the discharge of his



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

-3-

- 8. The petitioner begs to enclose a copy of Notification No. 33/99-CE dated 08/07/99 as amended which would show that there is no bar of sanction of any amount exceeding Rs. 5 (five) Lacs by officer of the level of the petitioner. In other hands, the Notification authorizes to sanction any amount of Refund Claim found eligible. (ANNEXURE-"H")
- 9. The petitioner also begs to refer to a case law in the matter of CCE, Dibrugarh. Vs. M/s. Napuk T.E. & M/s. Muttrapore T. E. wherein the Hon'ble CESTAT, Eastern Zone, Kolkata vide Order No. A-593/KOL/2006 dated 04/07/06 observed that the Assistant Commissioner cannot deny the applicants of their due claims and rejected the grounds of revenue. The Commissioner, Central Excise, Dibrugarh also accepted the said CESTAT's order with a direction to the petitioner to dispose similar cases as per the decision of the Hon'ble Tribunal (Copy enclosed CESTAT order dated 04/07/06 & Commissioner letter dated 22/09/06 for ready reference). (ANNEXURE-"I" & "J") It is pertinent to submit at this juncture that the Joint Commissioner of Central Excise, Dibrugarh vide his letter dated 25.07.2005 (supra) has projected the similar grounds to be considered at the time of passing order and the petitioner after careful examination of position of law and on the basis of the eligibility order passed refund sanction order (as aforesaid) and also without receiving any communication from the Commissioner of Central Excise, Dibrugarh about whether or not Review Application was being filed as per Section 35E of CEA 1944.
- 10. Under the aforesaid circumstances, the petitioner sanctioned the refund after observing necessary audit formalities and after examining the position of law as the assessee cannot be denied of their due claims
- 11. The petitioner begs to submit that there are nothing on record that the petitioner acted as unbecoming of a Government Servant rather the petitioner acted in bonafide maintaining absolute integrity and devotion to duties by making all facts known to the Commissioner of Central Excise, Dibrugarh & the Commissioner of Central Excise, Dibrugarh has not given the true & proper guideline as per the provisions of law where there are provisions in law for review of an order passed by the officer sub-ordinate to the Commissioner.
- 12. The petitioner also begs to request that he may be afforded the opportunity to be heard in person and an independent enquiry instituted.

PRAYER

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

Enclo: 26 Sheets.

I beg to remain Sir, Yours faithfully,

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

Speed Post.

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

(H.R.SAHA) ASSISTANT COMMISSIONER.

Annexure - VIII

Forme of the relevant provisions of Master Circular require to be extracted and referred to for proper appreciation of controversy whether these postdiated retirement of a Railway servant on incapacitation:

"I. Circumstances in which compassionate appointment may be made.

Appointments on compassionate grounds, relate to the appointment made of dependents of railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated/decategorised. The circumstances in which appointments on compassionate grounds may be made are as below:

- (i) When Railway servants lose their lives in the course of duty or get so crippled that they cannot do any work (this also in the course of duty for example, Loco and traffic running staff in charge of trains involved in accidents).
- IV. When Railway employees become crippled while in service or develop ailments like heart disease, cancer, etc. or otherwise medically decategorised for the job they are holding and no alternative job of the same employments can be offered to them."
- 5. A perusal of these Circular provisions does not specifically stipulate that benefit of compassionate appointment would be available to wards/dependents of those servants only who would retire from service due to physical incapacity incurred by them during such service. The spirit and sense behind these could as well be that as urged by Mr. Krishna, but it was not for us to fill up the gaps and read something in these provisions which was not contained therein. Doing that would tantamount to rewriting the relevant provisions and to provide for the ommission which does not fall within our domain. It was for the respondents to do so, more so when grey area in these were resorted to for seeking compassionate employment. Be that as it may, we find it innocuous to dispose of this petition by the following Order:

"Impugned Tribunal order is set aside and respondents are directed to reconsider petitioner's case for compassionate appointment subject to his eligibility/suitability and pass appropriate orders within four months from receipt of this order."

DELHI HIGH COURT (DIVISION BENCH) C.W. 2710 of 2000. Decided on 30.7.2001.

Versus

Union of India

Appellants

Respondent

Ms. Dolly Saxena

for A.I.C. Dhandon: Adoman

For the Appellants: For the Respondent:

Mr. A.K. Bhardwaj, Advocate, Mr. M.K. Gupta, Advocate.

PRESENT

The Hon'ble Mr. Justice B.A. Khan
The Hon'ble Mrs. Justice Sharda Aggarwal

Central Civil Services (Conduct) Rules, 1964—Rule 3- -Departmental Enquiry—Quasi Judicial Authority—No disciplinary proceedings can be initiated against a Quasi judicial authority on a mere charge of alleged neligence and recklessness in passing an adjudicatory order—Such proceed-

ings can be initiated only when it is shown that undue favour in the matter has been done for extraneous consideration by such authority.

JUDGMENT

Mr. B.A. Khan, J.-Short question involved is whether a Quasi Judicial Authority could be subjected to disciplinary proceedings under Service Conduct Rules (SCR) on a mere charge of alleged negligence and recklessness in passing an adjudicatory order.

- 2. Respondent a Collector of Customs and Central Excise at the relevant time, was to adjudicate the cases under Central Excise Act. She is charged to have dropped proceedings against the assessee M/s J.K. Synthesis (J.K. Synthetics?) accused of evasion of customs duty of 1.21 crores or so. A charge sheet dated 28.1.1999 was issued to her charging her with negligence and recklessness in discharge of duties and contravening Rule 3 of Conduct Rules, 1964. She made representations against this but failed. She then filed OA No. 2199/99 claiming that she could not be subjected to disciplinary proceedings on a charge of misconduct while exercising her quasi judicial functions. Petitioner opposed this on the plea that charge sheet could not be questioned at the threshold and that disciplinary proceedings could be taken for her negligence in the discharge of her duty causing loss to public revenue.
- Tribunal, on consideration of the matter, examined Articles of charges and found that these related to her alleged recklessness and negligence only and did not charge her of any other misconduct for showing favour to the assessees. It also went a step further and dabbled in touching the correctness of the charges. It accordingly, quashed the charge sheet placing reliance on the Supreme Court Judgment in Nagarkar v. UO1: 1997(7) SCC 409 holding that mere charge of negligence was not enough to subject a judicial or quasi judicial Authority to disciplinary proceedings for passing a wrong adjudicatory order.
- 4. Petition challenges this on the ground that Inbunal was firstly incompetent to quash the charge-sheet and that its order ran counter to the law laid down by Apex Court in UO1 and others v. K.K. Dhawan, 1993(2) SCC 56 holding that a quasi judicial Authority could be subjected to disciplinary proceedings on a charge of negligence or reckless in the discharge of quasi judicial.
- There is no dispute with the proposition that Tribunal could not examine the truth or otherwise of the charges in a disciplinary proceedings and quash the charge sheet for that at the threshold. In the present case Tribunal has touched the correctness of charges at places which may not sustain but that does not have any crucial importance for the outcome of this matter which required to be decided on a harmonious reconciliation of two judgments of the Supreme Court in Dhawan's and Nagarkar's case. In the first case Apex Court formulated a list of cases, though not exhaustive where disciplinary proceedings could be taken against officers while exercising quasi judicial powers on the premise that such a situation involve the conduct of an officer in the discharge of his/her duties and not the error or illegally committed while exercising quasi judicial powers. The list of such cases includes:
 - (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
 - (ii) if there is prima facie material to show recklessness or misconduct in the discharge or his duty;

2002(2)

2002(2)

- (iii) if he has acted in a manner which is unbecoming of a Government servant; ...
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory power;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however small the bribe may be.
- In Nagarkar's case however the court crystalised it further to hold that charge of mere negligence in exercise of quasi judicial Power would not constitute a misconduct to warrant a disciplinary action unless it was accompanied by a further charge of undue favour shown by the officer in dealing with the case. The Court noticed its judgment in Dhawan's case and held:-
 - "(40) When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness, inadvertence or omission but as culpable negligence. This is how this court in State of Punjab and others v. Ram Singh Ex- Constable, 1992(4) SCC 54 interpreted 'misconduct' not coming within the purview of mere error in judgment, carelessness or negligence in performance of the duty. In the case of K.K. Dhawan, 1993(2) SCC 56 the allegation was of conferring undue favour upon the assessees. It was not a lapse of negligence as such. In Upender Singh's case (1994(3) (sic) 357), the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of K.S. Swaminathan (1996(11) SCC 498); was not where the respondent was acting in any quasi judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the Court to see whether they support the charge of the alleged misconduct."
 - (43). "If; every error of law were to constitute a charge of misconduct, it." would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any chargesheet against a quasi judicial authority something more has to be alleged than a mere mistake of law e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet in rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions without fear or favour because of the constant threat of disciplinary proceedings."
- It is true that in the list of cases given in Dhawan's case a charge of negligence could also sustain a charge sheet against the quasi judicial Authority but it was required to be read in the facts of that case where the further charge was that officer had shown undue favour in the matter. This is how it was distinguished by the court in Nagarkar's case laying down that there must be

something more alleged than a mere negligence flowing from a mistake of law to sustain the charge sheet against the quasi judicial Authority.

We respectfully follow the ratio and reasoning of the Supreme Court Judgment to hold a mere charge of negligence or recklessness against an Officer in passing an adjudicatory order in exercise of quasi judicial functions unaccompanied by any further charge of extraneous considerations or quid pro quo in passing such order would not constitute a misconduct under the relevant rules to justify disciplinary proceedings rationale for this is not far to seek and is adequately brought out in the judgment supra.

This petition accordingly fails and is dismissed.

DELHI HIGH COURT (DIVISION BENCH)

Civil Writ Petition Nos. 4617 of 1997 and 2496 of 1999.

Decided on 17.8.2001.

Dr. V.P. Bansal

Union of India

Versus

Petitioner

Respondents

For the Petitioner:-

None.

For the Respondent No. 1:- Mr. Kirit N. Rawal, ASG and Mr. V.S.R. Krishna, Advocate.

For the Respondent No. 2:- Mr. P.P. Khurana, Senior Advocate with Mr. Neeraj Chaudhary, Advocate.

PRESENT

The Hon'ble Mr. Justice Devinder Gupta The Hon ble Mr. Justice Sanjay Kishan Kaul

Central Health Services Rules-Seniority-Promotion--Seniority will be counted from the date of actual joining- Recommendation of UPSC to join the post from a particular date is not the date for the purpose of counting senjority-On facts petitioners who had not completed the qualifying service of 3 years on the cut off date rightly not considered for promotion.

- (B) Central Health Service Rules-Seniority-- Promotion-- Petitioner selected in Central Health Service and advised to join on 22-2-1988-Joined on 19-10-1988-Before joining he was serving in PGI Chandigarh-Held service rendered in a different autonomous organisation (i.e. PGI Chandigarh) cannot be counted for the purpose of seniority in the Central Health Service.
- (C) Delay ande Laches-R.4 was appointed to relevant grade in 1981-83-Eligibility of R.4 cannot be challenged in 1997 being highly belated one.

JUDGMENT

Mr. Sanjay Kishan Kaul, J.-Two writ petitions have been filed by the petitioner aggrieved by the decisions of the Central Administrative Tribunal. Civil Writ No. 4617/97 was filed against the common judgment dated 22nd March, 1997 dismissing 3 OAs and a review application filed by the petitioner and Civil Writ No. 2496/99 was filed by the petitioner aggreed by the order dated 29th January, 1999. Since the factual matrix and the grievance of the petitioner are interwoven and inter-connected both petitions are being disposed of by a common judgment.

ANNEXURE-IX (Series)

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GOVT. OF INDIA OFFICE OF THE DEPUTY COMMISSIONER CENTRAL EXCISE DIVISION::JORHAT

Station Godown Road, Jorhat 785001

Phone: (0376) 2322805, Fax: 2320006 E-mail:div7403 & cenexjor@sanchamet.in

C.No.V(18)10/AGJ/REF/2004

Date

ORDER

M/s Napuk T.E., P.O. Suffry, Dist. Sivasagar, Assam, having Central Excise Registrat on No. AAACE5739RXM002 for manufacturing tea including tea waste under sub-heading No. 090 1.00 f Central Excise Taniff 1985 have submitted an application on 30.03.2004 claiming eligibility of refur 1 claim after undertaking substantial expansion by way of increase in installed capacity by not less than 25% after 24.12.97 in terms of Notification No. 33/99-CE dated 8.7.99.

They also submitted along with their application the assessment report prepared by Shri 12 Day a registered Chartered Engineer, copies of Bills, invoices/ challans in respect of the new mach nerie installed by them as well as copies of lay out plans of the factory showing diagrammatic represe tatio of the machinery before and after expansion. The assessee also submitted monthly statements c dut paid by them during the period from 26.04.2000 (Date of commencement of commercial production with increased installed capacity) to February 2003 claiming refund of Central Excise duty.

On scrutiny of records submitted by the said assessee, it was seen that the expansion of the factory had been completed on 24.04.2000 but applied for the benefit of expansion under the said Notification after a long period of time i.e. on 30.03.2004. They did not produce any reason for such delay in submission of their application.

Moreover, on going through the records it was further seen that the expansion of the factor, was limited to the CTC. Fermenting and Drying Sections only. No expansion was made of the ther Sections. Viz. Withering Rotovane etc. As such, it appeared that expansion of such limited sorts were not enough to qualify as "Substantial Expansion" as envisaged in the said Notification. The Assi tant Commissioner, Central Excise, Jorhat had also found that the refund claims if any filed now, i.e. on 31.03.2004 would hit by time bar. Further, it had not been proved that there was an overall increas: in capacity by at least 25%. For this purpose, increase in installed capacity of individual sections was considered irrelevant. The proof of purchase/acquire, transportations, receipt and installation of machinery had not been furnished.

Hence, the claim was rejected on the grounds mentioned above vide this office order un er C.No. V(18)t0/ACJ/REF/2004/3708 dtd. 4.11.04. The party filed an appeal to the Commissio er (Appeal), Customs & Central Excise, Guwahati, who decided the case in favour of the party in Ordern-Appeal No. 93/CE(A)GHY/2005 dtd.23.02.05. The department has now approached the CESTA F, Calcutta on appeal to the above said decision of the Commissioner (Appeal).

On further scrutiny and on going through Commissioner (Appeal)'s observation it is found that increase in installed capacity of limiting section(s) is enough to increase the overall installed scapacity of the manufacturing unit, on which Commissioner(Appeals) & CESTAT had passed a number of decisions. CBEC Circular No.207/5/2002-CX-6 dated 5.3.02 also clarifies the matter.

It is also observed that the time limit clause of submission of refund claim could not be inflicte as the Notification does not prescribe any time limit for claiming exemption under it and CBEC vid Circular No.354/B/90-TRU(Pt.II) dated 6.10.99 clarifies that refund under Notification No.33/99-CI dated 8.7.99 is not a refund under Section IIB to the covered by time limit.

In view of above observations and based on submitted documents on walt - . .

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after 24.12.1997. Therefore, prima facie it is found that the said M/s Napuk To Sur y, Sivasagar is entitled for the benefit so prescribed under Clause 3(b) of the Notification 11 (09). E dated 8.7.99.

In view of above, to avoid the interest burden, the claim of refund is considered sanction w.e.f. 26.04.2000 in light of the guidelines issued under Circular No.572 2000 in light of the guidelines issued under Circul

However, the party should note that in the event of any excess/erroneous refund, the serial will be demanded as provided under the Notification No.33/99-CE dated 8.7.99 & any with fill under practice and the applicant will be liable to pay back the entire amount if so demanded as the initial of Central Excise laws.

'sd ,

(M. C. HAZARIKA) DEPUTY COMMISSIONER

C.No. V(18)10/ACJ/REF/2004/ 10 24-26

Date: 27 1/06

Copy forwarded for information to:-

M/s Napuk T.E., P.O. Suffry, Dist. Sivnsagar, Assam

The Joint Commissioner (Audit), Central Excise, Dibrugarh

3. The Superintendent, Central Excise, Sonari Range

Sof Art

(M. C. HAZARIKA) DEPUTY COMMISSIONER *M*,



OFFICE OF THE DEPUTY COMMISSIONER CENTRAL EXCISE DIVISION:::IORHAT

Station Godown Road, Jorhat 785001

Phon. (0376) 3322805. Fav. 3320006 E-mail div7403 & conexioral a claunet in

C No.V(18)9/ACJ/REF/2011

Date

ORDL:R

M/s Muttrapore T.L. P.O. Suffix. Dist. Sivasagar, Assam, having Cerval Uscise Registration No. AAACE5739RXM003 for manufacturing tea including tea waste under oil heading No. 00(2)10/of Central Excise fariff 1985 have submitted an application on 30 03 2004 clear log eligibility of refine: claim after undertaking substantial expansion by way of increase in installe accents by not less than 25% after 24 12 97 in terms of Notification No. 33/99-CE dated 8.7 49.

They also submitted along with their application the assertment ropo to reputed by Shri R. Das a registered Chartered Engineer copies of Bills, invoicest challans in respect of the ack macamerics installed by them as well as copies of lay our plans of the factory showing dial parimatic representation of the machinery before and after expansion. The assessee also submitted a jubble statement of dots pand by them during the period from 66.04.2000 (Date of commencement of commercial proceeds to with increased installed capacity) to February 2003 claiming refund of Central axcise duty

On sentiny of records submitted by the said assessed in was seen that the expansion of the factory had been completed on 23.62.2000 but applied for the benefit on expansion under the said Nutification after a long period of time i.e. on 30 63 2504. They did not plo luce any remain for each delay in submission of their application

Moreover, on going through the records it was thether seen that the city ansion of the flictions was limited to the CTC Fermenting and Drying Sections only. No expanse it was made of the other Sections, Viz. Withering Rotovane etc. As such, it appeared that expansion of such limited was were not enough to qualify as "Substantial Expansion" as one isaged in the said New Carton

On going through the records the Assistant Commissioner, Comral Fig. sa. Jordan also to add day the refund claims if any filed now, i.e. on 30.92 2004 would his become for Lucther is had not been proved that there was no overall increase in canadity by at least 25%. It is suppose increase to installed capacity of individual sections was considered irrelevant

The proof of purchase acquire gransportations regeipt and astallation of additional machinetic with respect to actual dates of each and proof of payment for additional machinery had not been turnished

Hence, the claim was rejected on the grounds mentioned above in entire office order detect 04 11 04 funder C Not V(18)9-ACI-RFF/2004/3714-did-4-14-01. The proceedings in the the Commissioner (Appeal), Gustoms & Control Excise, Gusvalinti, who decid to the case in favour of the party in Ordersin-Appeal No. 9MCL(A)GHY/2005 did 23/02/15. The department has now open circled the CISTAT, Calculta on appeal to the above said decision of the Commussion of (Appeal)

On further security and on going through Commissioner (Appeal)'s coservation it is found that increase in installed capacity of limitude section(s) is enough to note ase the collectal end installed capacity of the manufacturing unit, on which Commissioner(Appeals) & CESTAT and passed a number of decisions. CBEC Circular No.2076-5602-CN-5 dated \$ 3.02 also clarifies the matter

It is also observed that the time limit clause of submission of refund claim could not be utilicial as the Notification does not prescribe any time limit for claiming exemption under it and CBEC side Circulat No 354/B-90-TRI (PLII) dated 5 10.99 charifies that refund under Notification No 53-99-CE dated \$ 7,99 is not a refund under Section 1111 to be covered by time limit

In view of the a abservations and based on cathoute a locuments as a litest Range Officer. 3 rowers partification appear dated 21 04 of it has been found that the said app cant has undertaken substantial expansion or way of increase in installed capacity of the factory by nore than 25% on or after 24 12,1997. Therefore, prima facio it is found that the said M/s Muttrapo : To a Estate, Suffry Swasagar is counted for the benefit so prescribed under Clause 30% of the Noticeation No 33/99/CE **त**मस्त ४ 7,99

the view of above to avoid the interest burden, the claim of retaind is con-letted for provisional. sanction was four of the fight of the guidelines issued under Circular No. 72/9/2001-CN dated

However the parts should note that in the event of any excess organeous round, the amount will he demanded as provided under the Northeatton No 33 90-15 dated 8 7 90 & any other law under practice and the applicant with he hable to pay back the entire amount if so denote bed as per pressistions of Central Excise laws

(M. C. HAZARIKA DEPUTY COMMISSIC JER

C No V(18)10/ACE/REF/2004/ 6/30-32

27.2-06 Date

Copy forwarded for information to-

Mrs Mutu apore T.E., P.O. Soffey, Dist. Sivasagar, Assum The Unit Commissioner (Audit), Contral Presso, Dibrigarh The Superintendent, Central Escise, Sonari Range

> 1 on do DEPUTY COMMISSIONER

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NAME OF THE TEA	ORDER NO & DATE	EXPANSION COMPLETED ON	DOCUMÉNTS SUBMITTED ON	PERIOD INVO: VED	CRDER LACCEPTED ON
Duklingia Tea Estate	Order-in-Appeal No 04/CE(A)/GHY/2005 DT: 25.01.2005	FEB 1999	16 04 2004	5 ,ears 2 months	22 05 2005
Borholla Tea Estate	Do	DEC. 1993	27 05 2004	5 years 4 months	Do
Suntok Tea Estate	Do	SEP 1998	31 03 2004	5 years 8 months	Do
Burnie Breaes T.E.	Order-in-Appeal No. 22/CE(A)/GHY/2005 DT: 19.04.2005	C002, RAM	21.07.2003	3 years 4 months	26.10 2005
Kanchanpore T.E.	Order-in-Appeal No: 17/CE(A)/GHY/2005 DT: 24.03.2005	08 12 1998	July.2003	4 years 7 months	26.10 2005

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THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

East Regional Bench: Kolkata

AnnexWe-X

CENTRAL EXCISE APPEAL NO.: EDM-381/05

Arising out of Order-in-Appeal No. 13/CE(A)/GHY/2005 dated-23/02/2005 Passed by the Commissioner of Central Excise(Appeals), Guwahati.

For approval and signature:

Mrs. Archana Wadhwa, Hon'ble Member (Judicial) Shri S.S. Sekhon, Hon'ble Member (Technical)

- 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
- 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
- 3. Whether his Lordship wish to see the fair copy of the order?
- 4. Whether Order is to be circulated to the Departmental Authorities?

M/s. C.C. Ex. Dibrugarh

Applicant(s)/Appellant (s)

Vs.

M/s. Napuk Tea Estate

M/s. Muttrapore Tea Estate

Respondent (s)

Appearance

Dr. Samir Chakraborty, Sr. Advocate for the Applicant(s)/Appellant(s)

Sri P.K. Das, JDR for the Respondent

CORAM:

Mrs. Archana Wadhwa, Hon'ble Member (Judicial) Shri S.S. Sekhon, Hon'ble Member (Technical)

DV

Date of hearing/decision: 4/07/2006

Order No. - 4-593/Kol/02

Per: Shri S.S. Sekhon,

This matter was heard pursuant to an order of the Hon'ble High Court of Kolkata in WP No. 575/06 dated April 28, 2006. The appellant is Commissioner of Central Excise Dibrugarh and the respondents are an assessee of a Tea factory manufacturing tea. The Ld. Commissioner Appeal) while interpreting the provisions of Section 11B dated -8/7/1990 held that filing of statement of duty paid is only a procedural requirement under the said notification and thereafter on merits allowed the admissibility of refund in the facts of the cases. The Revenue is in appeal against this order on the ground that the petition was filed by the Revenue on the grounds:

- (i) Commissioner (Appeals) relies on CBEC Circular F. No. 354/B/90-TRU (part-II) dated -6/10/99 to a given conclusion that the provisions of Section 11 AB is not applicable to claims under Notification No. 33/99-CE.
- (ii) It is settled law that in excise where a particular statute does not give limitation, prescribed under the general law i.e. Limitation Act 1932 (36) of 1933 shall be applicable and the present claim would, therefore, be barred.
- (iii) The Notification 33-99 stipulates that claims of refunds of particular month must be dealt before 7th of the subsequent month is settled law that the condition of notification has to be constituted strictly and in this case that applications have not been filed as prescribed and have been filed nearly four years thereafter.

Attention wie

and find that the grounds taken by Revenue do not meet the instructions of CBEC on the subject. We also find that the order of the Ld. Commissioner (Appeals) is balanced and has correctly appreciated the fact that no formal application for refund under Section 11AB was required to be filed and the refunds were to be determined by the Ld. Assistant Commissioner of Central Excise passed on the monthly returns filed which is the stipulations of the notification. For further material if the Assistant Collector so required. Would have been sought from the applicants.

We find that the Assistant Collector in having availed the benefit of notification cannot deny the applicants of their due claims. We find no merits in the grounds taken by Revenue and reject the same after confirming the order of Commissioner (Appeals).

Appeal rejected.

Dictated and pronounced in the open court.

(Archana Wadhwa) Member (Judicial)

(S.S. Sekhon)

Member (Technical)

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Annexure- XIXI

GOVT. OF INDIA OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE

DIBRUGARH

Milan Nagar 'F' Lane, P.O. C.R. Building, Dibrugarh- 786 003 Phone No.2314079/81/82 & FAX No. 0373-2314031 E-mail:cmmdbr@sancharnet.in

C.No.V(30)77/Appeals/05/2156-60 Dated: 22/9/17

The Debuty / Assistant Commissioner. Central Escure. Timsukin

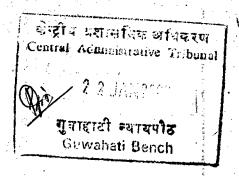
Subject! - CESTAT's Order No. A-593/KOL/2006 dated 04/07/2006 in the matter of CCE, Dibrugarh – Vs – M/s Napuk Tea Estate & M/s Muttrapore Tea Estate - C/r.

Please refer to the Hon'ble CESTAT's Order No. A-593/KOL/2006 dated 04/07/2006 in the matter of Commissioner of Central Excise, Dibrugarh - Vs - M/s Napuk Tea Estate and M/s Muttrapore Tea Estate. The said Order dated 04/07/2006 passed by the Hon'ble Tribunal has since been accepted by the Commissioner of Central Excise, Dibrugarh. You are, therefore, directed to initiate necessary action for disposal of similar cases including pending refund in line with the decision of the Hon'ble Tribunal as per law.

(N. PATHAK) JOINT COMMISSIONER

Meetita

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH AT GUWAHATI

O.A. No. 122 OF 2007

Sri Himanshu Ranjan Saha

... Applicant

-Versus-

Union of india & Ors.

.... <u>kespondents</u>

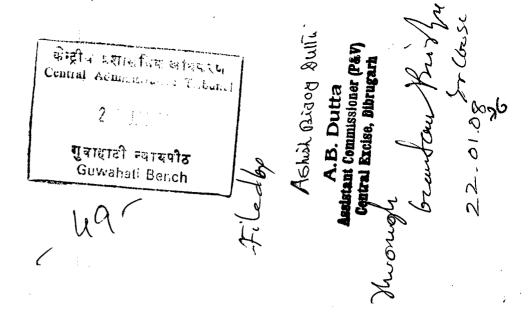
INDEX OF THE WRITTEN STATEMENT

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2.		Verification	11
3.		Annexure - 1	12 - 14

Filed by:

Grantam Rui A

Sylbase



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI, BENCH AT GUWAHATI

O.A. NO.122 OF 2007

Sri Himanshu Ranjan Saha

... Applicant

-Versus-

Union of India & Ors.

... Respondents

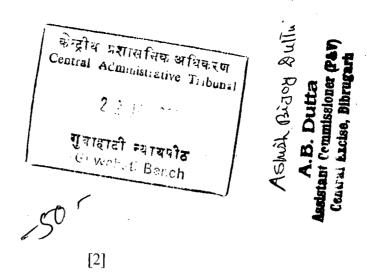
The written statement filled on behalf of the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS MOST RESPECTFULLY SHEWETH:

That with regard to the statements made in paragraph 1 of the instant application which are matters of record the Respondents have no comment, however it is submitted that the action taken against the applicant is legal and as per rules.

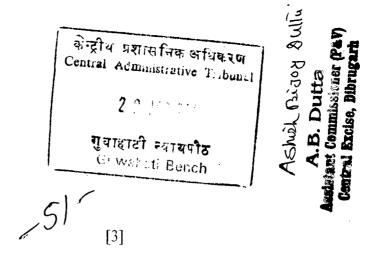
- 2. That with regard to the statements made in paragraphs 2 and 3 of the instant application the Respondents beg to offer no comment.
- That with regard to the statements made in paragraphs 4.1 and 4.2 of the instant application the Respondents beg to state that these are matters of record and the respondents do not admit anything which are not borne out of record.

Contd...p-2

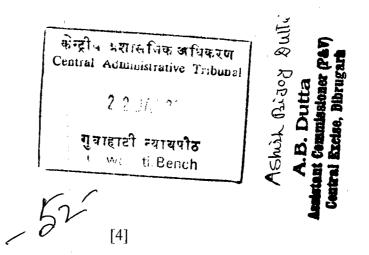


- 4. That with regard to the statements made in paragraph 4.3. of the instant application the Respondents beg to state that these are matters of record and the respondents do not admit anything which are not borne out of record and regarding the applicants claim that regular reminders from the assessee to pass the refund claim, it may be stated that the Assistant Commissioner should not have passed any order under duress of regular reminders. The Assistant Commissioner has to keep in mind the procedures as well as the instructions issued by the superior officers while dealing with official matters. He should not disobey the instructions of the superior officers on the ground that he is getting regular reminders from the assesses.
- That with regard to the statements made in paragraph 4.4. of the instant application the Respondents beg to state that the case mentioned in this paragraph in respect of M/s. Kakajan T.E. has no relevance in the instant case. The contents of rest of the para other than matters of record are denied as incorrect.
- 6. That with regard to the statements made in paragraph 4.5 of the instant application the Respondents beg to state that the applicant has no right to make a statement that his Commissioner has acted in a wrong notion to harass him, simply on the ground that the refund order passed by him was reviewed and appeal filed.

Contd....p-3

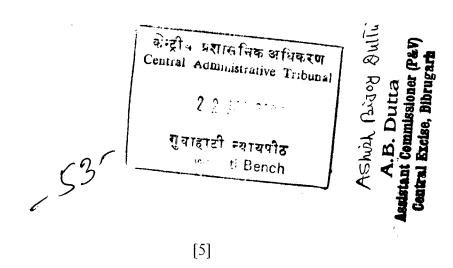


- 7. That with regard to the statements made in paragraph 4.6 of the instant application the Respondents have no comment, being matters of record.
- That with regard to the statements made in paragraph 4.7 of the instant 8. application the Respondents beg to state that the Memorandum No.55/2006 dated 25:09.2006 was issued to the applicant under Rule 14 of the CCS(CCA) Rules, 1965. The charges framed under the Memorandum No.55/2006 has nothing to do with the appeal filed under Section 35E of the Central Excise Act,1944, against the refund order passed by the applicant. The aforesaid memorandum No.55/2006 was issued specifically for insubordination, while the appeal under Section 35E was filed on technical grounds. It may be specifically stated that refund order has nothing to do with the charges leveled against the applicant under Memorandum No.55/2006. Since refund order was sent for pre-audit, it was examined and the applicant was directed not to sanction the refund claim. Instead , the applicant was in a great hurry to release the refund amount, in clear insubordination of the Commissioner's specific order and did so. It is denied that Memorandum of charges is malafide, motivated unfair arbitrary and opposed to procedure established by law.
- 9. The contents of paragraph 4.8 other than matters of record are denied, however the Respondents beg to state that the Assistant Commissioner is a quasi



sanction and disbursement of refund amount do not come under the purview of quasi judicial function but purely administrative function. There is prescribed procedure, checks and balances provided for such function. The applicant initially followed a part of such procedure by sending the case for pre-audit before sanction of refund. But, when he came to realize that the said refund would not be cleared in pre-audit, he set aside the procedure in the matter and sanctioned and disbursed the amount as refund to the assessee. This action is clear disobedience and dereliction of duty in discharging his responsibility. The officer deliberately acted against the Commissioner's specific order that the refund was not passed in pre-audit. The officer has acted in a manner which is unbecoming of a government officer.

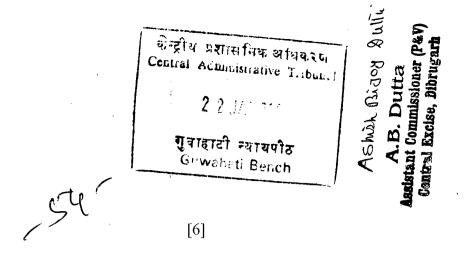
The applicant has relied upon the decision of the Hon'ble Delhi High Court that no disciplinary proceedings can be initiated against a quasi-judicial authority in a mere charge of alleged negligence in passing an adjudicatory order is not the correct position of law, in view of the judgment dated 21.04.2006 of the Hon'ble Supreme Court, in the case of Union of India –vs- Duli Chand, reported at 2007(207) ELT 166(SC). Under this judgment, the Hon'ble Supreme Court upheld the decision of the Larger Bench of Supreme Court in the case of K.K. Dhawan, reported at 1993(2) SCC 56, overruling the Supreme Court judgment in



The case of Zunjarrao Bhikaji Nagarkar [1999(112)ELT 772 (SC)]. In the case of K.K. Dhawan the Hon'ble Apex Court listed six instances when disciplinary action can be taken against the adjudicating authority, which are as follows:

- i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty.
- ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty.
- iii) if he has acted in a manner which is unbecoming of a Government servant.
- iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers.
- v) If he had acted in order to unduly favour a party.
- vi) If he had been actuated by corrupt motive, however small the bribe may because Lord Coke said long ago "though the bribe may be small, yet the fault is great"

The present case would fall squarely within various categories as listed above. Therefore, charge sheet under Memorandum No.55/2006 dated 25.09.2006 was issued properly following the rule.



A copy of the said judgment in the case of Union of India –vs- Duli Chand reported in 2007 (207) ELT 166(SC) is enclosed herewith as Annexure-I.

- That with regard to the statements made in paragraph 4.9 of the instant application the Respondents beg to state that at this stage, the applicant can not claim that allegations are not sustainable as the allegations are yet to be confirmed, based on the applicants reply to the Memorandum No.55/2006 dated 25.09.2006 and on the basis of further inquiry in the matter. Under the circumstances the allegations can not be presumed to be false, concocted, unfounded, malicious, arbitrary and opposed to the settled position of law, as the matter has not yet been decided.
- That with regard to the statements made in paragraph 4.10 of the instant application the Respondents beg to state that the decision of the CESTAT and communications made in this regard have no relevance to the allegations of deliberate disobedience, insubordination and dereliction of duty in discharge of responsibilities by the applicant as alleged in the above mentioned Memorandum No.55/2006 dated 25.09.2006. The applicant was given a specific direction by the Commissioner by withholding the pre-audit clearance in the matter, the applicant deliberately, without seeking pre-audit clearance from the component authority, sanctioned and disbursed the refund amount.



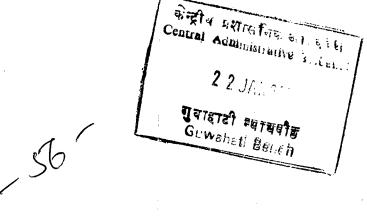
केन्द्रीय प्रशासनिक अधिकरेश Central Administrative Tribuit? 2 2 JAN12000 गुवाहाटी न्यायगीड Grwoheti Bench

[7]

These acts of insubordination and disobedience can not be justified and explained by citing subsequent decision of the CESTAT.

- 12. That with regard to the statements made in paragraph 4.11 of the instant application the Respondents beg to state that the applicant can not act under duress or under unfounded threat of interest. The refund under Notification No.33/99-CE dated 08.07.1999 is not governed by the provision of Section 11B of the Central Excise Act,1944. There is no provision of any interest on refund governed by Notification No.33/99-CE dated 08.07.1999 where no time limit was provided for granting refund which was claimed by the assessee after 6(six) years.
- 13. That with regard to the statements made in paragraph 4.12 of the instant application the Respondents beg to state that the charge sheet under Memorandum No.55/2006 dated 25.09.2006 is not issued under any vindictive action. His transfer from Tinsukia to Shillong was issued as per the "Central Board of Excise & Customs Transfer Policy" following the Central Vigilance Commission's guidelines. The applicant had also been charge sheeted under Ministry's F.No.C14011/24/2005-Ad.V/5831 dated 24.11.2006 for causing revenue loss to the Government exchequer by granting refund irregularly to M/s. Green Assam Company Pvt. Ltd.





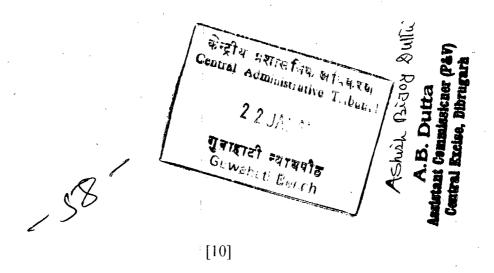
[8]

- 14. That with regard to the statements made in paragraph 4.13 of the instant application the Respondents beg to state that there are sufficient evidences on record to show that the officer acted as unbecoming of a government officer. His actions are not bonafide and he failed to carry out the duties and responsibilities reposed on him by the department. As the subject charge sheet, is still under inquiry, it will not be proper to quash it at this stage.
- 15. The grounds made in paragraph 5.1 of the instant application are denied, however the Respondents beg to state that being a quasi-judicial authority, the applicant was bound to follow certain rules, regulations and instructions issued by the superior officers. He can not violate the set procedure and instructions in the guise of exercising quasi-judicial power.
- 16. That with regard to the grounds in paragraph 5.2 of the instant application the Respondents beg to state that the department has already preferred appeal before the CESTAT against the order passed by the Commissioner(Appeal), Customs & Central Excise, Guwahati.
- 17. That the ground made in paragraph 5.3 and 5.4 of the instant application

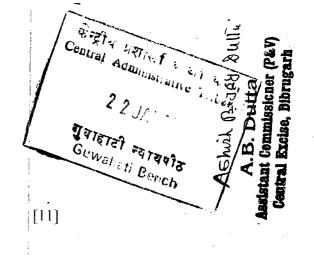
[9]

are denied, however the Respondents beg to state that the Assistant Commissioner is a quasi-judicial authority only when he is acting as an adjudicating authority. Processing, sanction and disbursement of refund amount do not come under the purview of quasi-judicial function, but are purely administrative functions.

- 18. That with regard to the grounds in paragraph 5.5 and 5.6 of the instant application the Respondents beg to state that the matter of refund claim of M/s. Chubwa T.E., the applicant sanctioned and disbursed the refund without seeking pre-audit clearance from the competent authority, which is a clear violation of the Government Circular No.809/6/2005-CX dated 01.03.2005, wherein it was stated specifically that all refund claims which are of more than Rs.5 lakhs are to be compulsorily pre-audited. The act of insubordination and disobedience cannot be justified and explained by citing subsequent decision of the CESTAT.
- That with regard to the grounds made in paragraph 5.7 of the instant application the Respondents beg to state that the disciplinary proceedings in this case have been issued following the proper law. The prayer of the applicant is not only illegal, but also unjust, and therefore, the same should be summarily dismissed. The respondents further beg to state that the grounds set forth by the applicant are not good ground and the same are not tenable in law, as well as, on facts and as such the instant application is liable to be dismissed.



- 20. That with regard to the statements made in paragraph 6 & 7 of the instant application the Respondents have no comment.
- That with regard to the statement made in paragraph 8 & 9 of the instant application the Respondents beg to state that the claim of the applicant is illegal and ill founded and therefore the applicant is not entitled to get any interim relief, or relief's as prayed for .
- That contents of paragraphs 11,12 being formal need no comments from the respondent.
- That the respondents submit that the instant application has no merit and as such is liable to be dismissed.



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VERIFICATION

I Shri Ashish Bijoy Dutta S/o. Late. Jitesh Chandra Dutta aged about 53

years, R/o. Dibrugarh-786003, District- Dibrugarh Assam and component officer

of the answering respondents, do hereby verify that the statement made in paras 1 - 8 210 - 23 are

being matters of record are true to my information derived

therefrom which I believe to be true and the rests are my humble submission

before this Hon'ble Tribunaland I have not suppressed any malerial fact

And I sign this verification on this 214h day of JANUARY 2008 at

Guwahati.

Signature

AShish Bijoy Dutta)
(ASHISH BIJOY DUTTA)
ASSISTANT COMMISSIONER (P&V)
CENTRAL EXCISE DIBRUGARH

A.B. Dutta Assistant Commissioner (P&V) Contral Excise, Bibragarh 12-

2007 (207) E.L.T. 166 (S.C.)

IN THE SUPREME COURT OF INDIA

Central Ruma Pal, C.K. Thakker and Markandey Kafju,)].

UNION OF INDIA

Versus

DULI CHAND

Civil Appeal No. 2168 of 2006, decided on 21-4-2006

Adjudicating Officer though performing quasi-judicial function still liable for negligence - Nagarkar's case overruled - Adjudicating officer found grossly negligent while discharging quasi-judicial functions - Refund claims *allowed negligently thrice - Charge of gross negligence upheld by Central Administrative Tribunal but disciplinary proceedings dropped - Tribunal order upheld by High Court - HELD: Initiation of disciplinary action against of-' ficer who exercises judicial or quasi-judicial powers acting negligelitly or recklessly held as sustainable by Larger Bench of Supreme Court in KK. Dhawan (1993) 2 SCC 56 - Requirement of culpability as held in Zunjarran Bhikaji Nagarkar [1999 (112) E.L.T. 772 (S.C.)] contrary to Larger Beach decision of Supreme Court and not correctly represent the law officerger Bench decision to prevail - Impugned decisions set aside - Order of punishment upheld - Rules 11, 15 and 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Section 11B of Central Excise Act, 1944. [(1993) 2 SCC 56 affirmed and 1999 (112) E.L.T. 772 (S.C.) overruled]. [paras 2, 3, 5, 8, 9].

Precedent - Decision by Bench of two Judges contrary to emlier decision by Larger Bench of three Judges - Larger Bench decision to prevail -Views expressed by Bench of two Judges not represent correct law. [pura 9]

Appeal allowed

पह अंतिहरू

CASES CITED

Govt. of Tamilnad	u v. K.N. Ramamurthy — (1997) 7 SCC 101 — Relied on	[Para 7]
Union of India v. I	C.K. Dhawan (1993) 2 SCC 56 Affirmed	[Paras 5, 7, 9]
Zunjarrao Bhikaji	Nagarkar v. Union of India — 1999 (112) E.L.T. 772 (S.C.)	and great
— Overrule	d	[Paras 2, 8, 9]

[Order]. - Leave granted.

2. The issue in this appeal is whether disciplinary acti; could be taken against the respondent-employee on the ground that the employee had been found to be grossly negligent while discharging quasi-judicial functions. We need not go into the factual aspect of the dispute except to record that the respondent had been punished by the disciplinary authority on the ground that he

Acqueistion, had negligently allowed claims for refund to an applicant exchiree different casions. The punishment imposed was stoppage of two animal increments cumulative effect. It may also be noticed at this stage that there is the term of the fact that the disciplinary authority had complied with all the necessity pres cedures for passing the impugned order. However, the action of the disciplinary, cedures for passing the impugned order. However, the action of the Bench authority was challenged before the Central Administrative Tribunal on the Bench ground that no disciplinary proceedings would lie against an officer discharging judicial/quasi-judicial functions unless there was an element of moral turpitude. The Central Administrative Tribunal upheld the finding of the gross negligence on the part of the respondent. But it was held, relying upon the decision of this Court in Zunjarrao Bhikaji Nagarkar v. Union of India 1[(1999) 7 SCC 409] that disciplinary proceedings would not lie against the officer discharging quasi-judicial functions unless it were established that the officer concerned had obtained an undue act vantage thereby or in connection therewith.

3. The decision of the Tribunal was challenged by the appellants before the High Court. The High Court came to the conclusion that since no ulterior motive was alleged against the respondent, the Tribunal was correct in quashing the proceedings against the respondent.

Learned counsel appearing on behalf of the appeliants in impugning the order has submitted that the decisions of the Tribunal and the High Court have incorrectly proceeded on the law as it now stands on the legue.

- 5. The law on the subject was considered in extensorin the three radge Bench decision of Union of India v. K.K. Dhawan [(1993) 2 SCC 56] wherein it was noted that the view that no disciplinary action could be initiated against an oilicer in respect of judicial or quasi-judicial functions was wrong. It was further said that the officer who exercises judicial or quasi-judicial powers acting negligently or recklessly could be proceeded against by way of disciplinary action. The Court listed six instances when such action could be taken: (SCC p. 67, para 28)
 - "28.(i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
 - (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
 - (iii) if he has acted in a manner which is unbecoming of a government ser-
 - (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
 - (v) if he had acted in order to unduly favour a party;
 - (vi) if he had been actuated by corrupt motive, he wever much n bribe may be because Lord Coke said long ago though the bribe may be small, yet the fault is great'."
 - 6. The Court, however, made it clear that ultimately the matter would have to depend upon the facts of a particular case. The present case would fall squarely within the fourth instance listed above.
 - 7. The decision in K.K. Dhawan case was considered by this Court and followed in Govt. of T.N. v. K.N. Ramamurthy [(1997) 7 SCC 101]. In that case the Tribunal had set aside the order imposing punishment on an officer who had been discharging judicial functions. The Court was of the view that the Tribu-

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A.53 reported in 1999 (112) E.L.T. 772 (S.C.).

Confidence

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nal's action was contrary to the several judgments of this Court and the settled law on the question.

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- 8. In 1999 another Bench of two Judges in Zunjarrao Bhikaji Nagarkar considered and referred to these earlier decisions. However, the Court appears to have reverted back to the earlier view of the matter where disciplinary action could be taken against an officer discharging judicial functions only where there was an element of culpability involved. Since in that particular case there was no evidence whatsoever that the employee had shown any favour to the assessee to whom refund had been made, it was held that the proceedings against him would not lie. In fact the Court set aside the disciplinary proceedings at the stage of the issuance of charge-sheet to the charged officer.
- 9. In our opinion, Nagarkar case was contrary to the view expressed in K.K. Dhawan case. The decision in K.K. Dhawan being that of a Larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld. There will be no order as to costs.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH: GUWAHATI

Rejoinder in O.A. No. 122/2007

Shri Himangshu Ranjan Saha.

: Applicant.

-Versus-

Union of India & Ors.

: Respondents.

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Date:- 16.06.08

Filed By:

Advocato

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IN THE CENTRAL ADMINISTRATIVE TRIBUN Afterहाटी न्यानपीठ Guwahati Bench

O.A. No. 122/2007

In the matter of:-

Shri Himangshu Ranjan Saha ... Applicant.

-Versus-

Union of India and Others.

... Respondents.

-And-

In the matter of:-

Rejoinder filed by the applicant against the written statement submitted by the respondents.

The applicant most humbly and respectfully beg to state as under;-

1.

That the applicant denies the statements made in para 1 and 3 of the written statement and begs to state that the action initiated against the applicant is illegal, unfair and against the rules laid down on the matter disputed herein. In this connection it is relevant to mention here that the action taken against the applicant is without any genuine cause/ground as the same nature of refund was sanctioned by the other Divisional officer, wherein the then Commissioner, Central Excise, Dibrugarh has not aised any objection or point out about the pre-audit. An example is of M/s Kakajan T.E where Sri M.C. Hazarika, Deputy Commissioner, Central Excise, Jorhat had not applied for pre-audit of the refund of Rs. 1.18 Crores and the reply of Joint Commissioner, Central Excise, Dibrugarh vide his letter dated 27.09.05 (enclosed as Annexure- A) and subsequent refund order dated 03.11.05 of the Deputy Commissioner, Central Excise, Jorhat (enclosed as Annexure-B) clearly indicates that the then Commissioner, Central Excise, Dibrugarh has cleared the refund of M/S Kakajan T.E without pre-audit as the respondents knows very well hat in the refund under Notification No. 33/99-CE dated 08.07.99 and

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were silent in that case.

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केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal 1 9 JUN गुलाहाटी चायपीठ मुलाहाटी चायपीठ मुलाहाटी खायपीठ

32/99 CE dated 08.07.99 does not come under Section 11 B of Excise Act 1944, so no question of time bar and it won't come under the Govt. Circular No. 809/6/205-Cx dated 01.03.2005 (which is for the refund under Sec 11 B of CEA, 1944 only) and respondent agreed also in their written statement in para 12. If pre-audit was at all required then how Sri M.R. Mohanty, Joint Commissioner, Central Excise, Dibrugarh wrote the letter on 27.09.2005 to the Deputy Commissioner, Central Excise, Jorhat to pass an order. In his reply dated 21.01.08 it is again clear that the then Commissioner, Central Excise, Dibrugarh has made complain/sent to vigilance for vigilance case due to personal enmity, with a malafide intention to harass the applicant. Not only that the then Commissioner, Central Excise, Dibrugarh sent false report to the Chief Commissioner and the D.C (Vigilance) that it is a fraud case, but no action was taken against Sri M.C. Hazarika, Deputy Commissioner, Central Excise, Dibrugarh and Sri R'N. Pegu, Superintendent, Central Excise Division, Dibrugarh regarding the sanction of huge amount and loss of Govt. revenue in the case of M/S Upper Assam Tea Industries, Lahol, Dibrugarh where the Departmental officer on query found fraud case, as there was no expansion were taken place and the Commissioner, Central Excise, Shillong imposed penalty on the owner as well as the Chartered Engineer who had given false certificate about the expansion, but the respondents

That in reply to the statements made in para 4 of the written statement, the applicant begs to state that the applicant knowing fully well about official procedure and rules has acted as per order of the respondents' letter C. No. V (14)19/Pre-Audit/DIB/2005/8670 dated 25.07.2005 (Copy enclosed as <u>Annexure-C</u>) in the last but concluding para "you are required to pass an order on merits, keeping in view the aforesaid position of law. Please ensure that principle of natural justice are not violated". Once order passed in favour of the asseessee following natural justice by way of granting personal hearing and observing all formalities as required under notification No. 33/99-CE dated 08.07.99 being a quasi judicial authority under the provision of Section 33 of CEA, 1944. Therefore

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rejection of the order passed by the applicant does not arise until the higher authority direct to file appeal before the Commissioner (Appeal) under provision of Section 35E of CEA, 1944, which the applicant clearly mentioned in his reply to memorandum No. 55/06 dated 15.11.2006 in para 5 and 6 and nowhere the then Commissioner, Central Excise, Dibrugarh has not given any proper direction and even in the matter of interest also, which the respondents are mentioning now. So, the question of disobeying the instructions of the superior officer does not arise at all. The applicant passed the order on merit after obtaining undertaking from the assessee to safeguard the Revenue, as directed and as per instruction/guidelines of the notification No. 33/99-CE dated 08.07.1999 and acted as bonafide maintaining absolute integrity and devotion to duties.

3. That the applicant categorically denies the statements made in para 5 of the written statement and begs to submit that the case referred by the applicant is very much relevant in the instant Original Application. Applicant's order for eligibility was on 10.05.2005 and M/S Kakajan T.E's eligibility order was on 16.05.2005 i.e. after one week. If the applicants' case falls under so called time bar factor and other way which mentioned in the Joint Commissioner letter dated 25.07.2005, then how the case of M/S Kakajan T.E. can be in order when it is said that "you are directed not to withheld refund on this ground only (vide letter dated 27.09.05 by the same officer). However, in order to ensure that revenue is safeguarded in case any amount is found refundable, by obtaining undertaking from the claimants to the effect that they should refund the entire amount in the event of Appellate Commissioner's Order goes in Department favour. This case was not withheld nor pre-audited as per Covt. Circular No. 809/6/2005-CX dated 01.03.2005 if at all required. It appears that different attitude have been adopted while administrative order have been issued on the same subject by the then Commissioner without assigning any valid reasons for taking altogether all together different views on the identical issue of refund. Therefore it appears that the respondents in order to cover up the lapses of the then Commissioner submitting

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misleading statement before the learned Tribunal by misrepresenting the factual position, as such relevant order of refund passed in the case of M/S Kakajen T.E. dated 16.05.2006 may kindly be summoned for perusal of the Hon'ble Tribunal.

- That with regard to the statements made in para 6 of the written 4. statement, the applicant most respectfully begs to submit that the applicant has every right as per Indian Constitution to protect himself by showing the wrong notion of the respondent's activities for which a genuine, honest, active officer can not be made to suffer. It is also relevant to mention here that the then Commissioner, Central Excise, Dibrugarh had failed to exercise her power under provision of Sec 35 E of CEA, 1944 rather liberty is granted to the applicant to dispose of the refund claim on merits by the letter dated 25.07.2005. Commissioner cannot withheld order of the quasi judicial authority subordinate to him/her. In review, if the competent authority is not satisfied as regard the order of eligibility or order granting the refund claim in that event the authority is vested with the power to prefer appeal against the said order of the subordinate officer under provision of Section 35 E of CEA, 1944. It is surprised to note here this stage that the then Commissioner, Central Excise, Dibrugarh's has passed two different order out of two similar cases of refund under same notification No. 33/99-CE dated 08.07.99.
- 5. That the applicant categorically denies the statements made in para 8 of the written statement and begs to submit that there is no question of insubordination. The applicant acted as per order of the respondent letter dated 25.07.2005 (copy enclosed). Charges framed under memorandum No. 55/2006 is deplorable, baseless allegation which is a clear indication and manifestation of a pre-conceived notion of vindictive and biased attitude to spoil the career of a sincere, honest, active officer who worked in other organization also on deputation with full satisfaction of the senior officer of those organizations. The memorandum No. 55/2006 is directly related with the refund case. Respondents no where directed the applicant not to sanction of the refund claim rather instructed to pass an order on merit and to ensure the principle of natural justice are not violated. In this

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respect, detail mentioned in para No. 4 above. It is clear that the then Commissioner, Central Excise, Dibrugarh has acted with malafide intention to harass and spoil the career of the applicant which is proved by her action in different stages/steps.

That the applicant categorically denies the statements made in para 9 of the written statement and begs to submit that refund order is also an adjudication order. As per adjudication order under Section 33 of Central Excise Act, 1944, the Deputy/Assistant Commissioner is issuing refund by giving speaking order either for sanction or rejection and as per notification the Divisional Officer i.e. Deputy/Assistant Commissioner of the Division is fully authorised by the C.B.E.C to grant refund. It is clearly mentioned in the notification that the assessee will submit the refund claim by 7th of the following month and Divisional officer will sanction refund by 15th. There is nothing mentioned about pre-audit. Moreover, these two notifications issued for the North East Region i.e. 32/99 CE and 33/99 CE both dated 08.07.1999 is a special notification issued for the North East Region to give special economic packages to the industries of the North East Region and Central Excise Section 11 B of Central Excise Act 1944 not applicable (C.B.E & C Circular No. 842/19/2006-CX dated 08.12.2006) (enclosed as <u>Annexure- D</u>).

Refund processing sanction and disbursement are quasi judicial in nature (judgment of the Hon'ble Bombay High Court in the case of Bombay Chemicals Ltd. Vs U.O.I (reported in (2006) (201) ELT. 167 (BOM) decided on 20.07.2005 is enclosed herewith and marked herewith as Annexure- E.

It is further submitted that Commissioner cannot keep adjudication order of the subordinate officers pending for an unlimited period- either department should accept or to file appeal before the appellate authority under the provision of Sec 35 E of CEA, 1944. Where in the case of M/S Kakajan T.E the then Commissioner's order passed altogether a different, reverse order without questioning the requirement of pre-audit. Moreover, the then Commissioner, Central Excise, Dibrugarh is silent on the question how she has approved the refund claim of M/S Kakajan T.E.

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without pre-audit when amount is much more higher than the applicants are case for which instant disciplinary proceeding.

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It is stated that applicant acted as per order of the Commissioner dated 25.07.2005, which mentioned in para 4 above, as such allegation labeled against the applicant is arbitrary, malafide and the same is liable to be set aside and quashed. It is also stated that applicant has worked in different organization with good reputation like Central Economic Intelligence Bureau (Ministry of Finance), New Delhi and Narcotics Control Bureau, Ministry of Finance (now under Ministry of Home Affairs), Imphal and came out with full satisfaction of the superior officers. It is relevant to mention here that due to personal animosity of the then Commissioner, Central Excise, Dibrugarh with the applicant the impugned memorandum of charge sheet dated 22/25.09.2006 has been issued upon the applicant.

The respondent in the written statement has relied upon the judgment and order dated 24.04.06 of the Hon'ble Supreme Court in the case of U.O.I -Vs- Duli Chand, reported in 2007 (207) ELT 166 (SC), which is a case of refund under Section 11 B of Central Excise Act, 1944 and the applicant's refund case does not fall under Section 11 B as agreed by the respondents in their reply at paragraph 12. The six instances pointed out does not fall in the case of the applicant as reported at (1999) 112 ELT 772 (SC) in the case of Zunjarrro Bhikaji Nagarkar -Vs- U.O.I in Civil Appeal No. 4294 of 1999, decided on 06.08.1999. If every error of law were to constitute a charge of misconduct it would adversely affect upon independent functioning of quasi judicial officer. If a charge sheet is based only on mistake of law without any allegation of some extraneous consideration influence the quasi judicial order is sustainable rather it would shake the confidence and independent functioning of the quasi judicial authority, entire system of Administrative adjudication where under quasi judicial power are conferred on administrative authorities would fall into these reputed officers while issuing sanction orders which are inhibited in performing the functions under Section 33 of Central Excise Act, 1944 (Enclosed as <u>Annexure-F</u>).

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In para 41 of the judgment the Hon'ble Apex Could further para observed in para 42 "that it was not a case for initiation of disciplinary proceeding against the applicant, charge of misconduct against him was not proper it has to be quashed."

It is humbly submitted that the ratio of the judgment as stated by the respondent in the case is not applicable as the gross negligence is not proved in the case of the applicant rather ratio of the judgment as enshrined in the Nagarkar case squarely applicable. Applicant as per order has sanctioned the refund on merit of the case so the question of disobedience and insubordination does not come at all. If it was rejected, may go against the principle of natural justice as mentioned.

First of all the applicant sanctioned the refund of notification No. 33/99 CE dated 08.07.1999 as per Board's instruction as there is no bar of sanction of any amount exceeding Rs. 5 lakhs by the officer of the level of the applicant. In other way, notification authorized to sanction any amount of refund found eligible and as per letter of the Commissionerate office C. No. V (14)19/Pre-Audit/DIB/2005/8670 dated 25.07.2005 which is mentioned in para 4 above. It is not at all relevant with the instance shown by the respondent in para 9 of the written statement.

It is stated that the then Commissioner, Central Excise, Dibrugarh has clearly and unambiguously contradicted herself. The allegation of insubordination of the order of the then Commissioner by the applicant does not arise at all hence such allegation is categorically denied rather applicant has complied with the order of the then Commissioner. Therefore, the impugned charge sheet dated 22/25.09.2006 under memorandum No. 55/2006 was issued with vindictive and biased attitude to harass the applicant (reply of the impugned charge sheet has already been sent one and half year ago). It is relevant to mention here that the then Commissioner, Central Excise, Dibrugarh referred the genuine case of expansion of the assessee factory to the C.B.I authority mentioning a fraud case (enclosed as <u>Annexure-G and H</u>) whereas it was the duty and responsibility of the Commissioner to verify from her office after receipt of the eligibility order of the applicant if there is any doubt about the expansion without verification from Commissioner's office the said matter

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was referred to the C.B.I authority with a vindictive attitude to cause, at a harassment to the applicant. In this aspect, the applicant humbly prays before the Hon'ble Tribunal to call for the C.B.I report submitted to the respondents. Whereas the then Commissioner deliberately did not refer the actual fraud cases against those officers who has sanctioned the refund of M/s. Upper Assam Tea Industries, Lahol, Dibrugarh and M/s. Kakajan T.E of Jorhat where the department after enquiry found claims were false as because there was no expansion of the factory at all.

There are so many examples of vindictive and biased attitude of the then Commissioner, Central Excise, Dibrugarh.

a) The applicant applied for earn leave from 02.03.2005 to 24.03.2005 to attend his son's Class-X examination under CBEC a month ago which was not responded. Without getting the leave sanctioned, the applicant could not inform his family about his presence at the time of examination. On tension, the applicant's wife fell ill and Doctors' advise her to take rest. In this respect the son of the applicant sent telegraph to his father "mother ill, come sharp". After receipt of the telegraph, the applicant wrote a letter to the then Commissioner along with a copy of the telegraph and revised E.L. application from 01.03.2005 to 24.03.2005 in the morning hours of 28.02.2005. After waiting up to 18 hours on 28.02.2005, the applicant left the office to attend her wife by night bus. No response of the revised Earn leave application, which was on medical ground. In spite of several reminders and Doctors' certificate, the then Commissioner has not granted the applicant's genuine E.L. for that period and pay has been held up. After reminding and waiting for about two years applicant prayed before this Hon'ble Tribunal to redress his genuine claim in O.A. No. 57/07. This Hon'ble Tribunal has been pleased to order in favour of the applicant and directed the respondents to regularize applicant's leave and to pay the arrear dues within a time frame (Enclosed as Annexure- I, I and I-1). In spite of Hon'ble Tribunal's order, till date the respondents has not regularized the applicant's leave and not paid his arrear pay. But in the case of other Assistant Commissioner, who left for Delhi to see his ill mother without informing and applying for leave from the then Commissioner in the year 2006, (which the then Commissioner herself

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stated in the monthly meeting of the D.C/A.Cs of the divisions) his leave has been sanctioned without any objection later on. So here discribe attitude of the then Commissioner is vindictive. One officer suffering with prior information of leave and other who avail the leave without information and permission enjoying at the sweet will of the then Commissioner. This also proves the then Commissioner, Central Excise, Dibrugarh's vindictive attitude towards the applicant.

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- 7. That with respect to the statement made in paragraph 10 of the written statement the applicant begs to state that the contention of the respondent in para 10 is vague and not based on facts and appears to have acted on mere inference only.
- 8. That question of insubordination and disobedience cannot come here at all. It is false and baseless and charge against the applicant only to harass the applicant as the then Commissioner was biased so without going through the rules and Act unnecessarily makes point to withhold the refund. Moreover, the question of time barred etc. cannot come in this refund case which the applicant clearly mentioned in his letter dated 29.06.2005 (Copy enclosed as Annexure- K). Even the applicant mentioned the judgment of numbers of Appellate Forum and CESTAT, such late submission case has been settled and accepted by the department. In case of M/S Duklengia T.E, Borholla T.E. and Suntuk T.E in O.A No. 4/CE(A)CHY/05 dated 25.01.05 appears to be more identical to his case which has been accepted by the department. Besides there are number of similar situation cases viz; Namrup T.E., Maud T.E., the then Commissioner gave consequential relief on the ground that there is no "ban in late submission of such claim", only condition is the Unit should be eligible and it should be determined by the proper authority. Here in notification No. 33/99 CE dated 08.07.99, the proper authority is Deputy/Assistant Commissioner of the respective Division. All the case has been accepted by the then Commissioner, Central Excise, Dibrugarh and even the case of M/S Kakajen T.E whose eligibility was fixed after a week of the applicant's order of eligibility of M/S Chubwa T.E. But no

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reason has been assigned as to why the refund claim of M/S Kakajan T.E. was not referred for pre-audit.

However, the CESTAT, Kolkata order dated 04.07.2006 (Annexure-L) has direct link in the case of the applicant also. If the Commissioner accepted the applicant's proposal or request made in the letter dated 29.06.05, there should not be any problem and the question of issuing impugned memorandum No. 55/06 dated 22/25.09.2006 might not be required.

In this matter, the applicant begs to mention here that the then Commissioner, Central Excise, Dibrugarh herself forgotten that in her letter dated 25.07.2005 has allowed the applicant to pass an order on merit. Applicant being the quasi judicial authority allowed the eligibility after going through the documents of the assessee and given award following natural justice by way of personal hearing, as such how the same quasi judicial authority reject the refund claim unless and until the then Commissioner, Central Excise, Dibrugarh in this case exercise her review power under provision of Sec 35 E of CEA, 1944. Moreover, in the refund case of Notification No. 33/99 dated 08.07.99, the question of pre-audit does not arise and at all not required. But surprisingly the same Commissioner and her subordinate officers has allowed the refund case of M/S Kakajen T.E of Jorhat Division without pre-audit (if pre-audit required) and amount also involved Rs. 1.18 Crores which is much more that the applicant's refund case which is amounting to Rs. 77 Lakhs only. It is proved that the memorandum No. 55/06 dated 25.09.2006 was issued only at the instance of the then Commissioner, Central Excise, Dibrugarh and which has done only in the applicant's case due to personal enmity with a vindictive, unfair, arbitrary and biased attitude just to harass the applicant and spoil the career of the applicant who is supposed to get promotion as Deputy Commissioner. In this respect Chief Commissioner, Shillong's letter C. No. IV(16)35/CCO/SH/03/32297-98 dated 29.10.2004 is referred. (Enclosed as Annexure- M).

That with regard to the paragraph 12 of the written statement the applicant begs to state that the respondents has agreed and accepted the

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factual position now that refund under notification No. 33/99 CE dated 08.07.99 is not governed by the provision of Sec 11 B of CEA, 1944. The question of interest now the respondent is clarifying but the same was not clarified on the applicant's letter mentioned in the last para of dated 29.06.2005 (enclosed as Annexure- K).

That the applicant categorically deny the statements made in paragraph 13 of the written statement and further begs to state that issuing of impugned charge sheet dated 22/25.09.2006 at the instance of the then Commissioner, Central Excise, Dibrugarh is purely on vindictive and biased attitude with malafide and motivated intention to harass the applicant only since the then Commissioner herself ordered the applicant to pass order on merit keeping in view that the principle of natural justice are not violated. The applicant in his entire service career never fall in such situation wherever he worked, he worked with full satisfaction of the higher official, his service book may be called for if deem fit by this Hon'ble Tribunal. The applicant worked in Central Economic Intelligence Bureau (Ministry of Finance), New Delhi and Narcotics Control Bureau, Ministry of Finance (now under Ministry of Home Affairs), Imphal as Inspector and Superintendent. For his best performance and excellence work in N.C.B, Imphal, the applicant was given over all charge of entire North East Region as Superintendent in place of Dy/Assistant Director by the Ministry. Not only that the applicant was awarded for foreign training at Istambul (Turkey) by the Ministry of Finance during 1997. As Assistant Commissioner, the applicant graded A+ Officer by the Department for his best performance at the starting of Dibrugarh Commissionerate. He worked in different places in this region with out any trouble during his service period since 1976. This problem started only when the then Commissioner, Central Excise, Dibrugarh joined and started to take revenge on personal animosity. The impugned memorandum dated 22/25.09.2006 clearly indicates that at the instigation of the then Commissioner, Central Excise, Dibrugarh the higher authority issued the impugned memorandum to spoil the career of the applicant. After

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issuance of the charge sheet the respondents referred the matter to Ball Bonch for further investigation just to harass the applicant and withheld the pay.

It is stated that another charge sheet under Memorandum No. 62/06 dated 24.11.2006 issued upon the applicant at the instigation of the then Commissioner, just to harass the applicant. The applicant has already replied in time through the respondent and asked for the relied upon documents to the authority through the respondent (Copy enclosed as Annexure- P) but the respondents failed to submit the relied upon documents till date even after completion of One year six months, which proves that intention of the respondents where there is no base at all. This clearly indicates the vindictive attitude of the then Commissioner. Knowing all the facts, the respondents unnecessarily mentioning/quoting the same thing in all replies/correspondences that charge sheet is also relevant to the notification No. 32/99 CE dated 08.07.99 special notification for North-Eastern Region and not covered under Section 11 B of the CEA, 1944. Circular No. 842/19/2006-CX dated 08.12.2006 mentioned in para- 9 is enclosed as Annexure- D. However, the objection raised by the then Commissioner who informed to the higher authorities for which this memorandum issued by the Director General (Vigilance), New Delhi has already been settled and dropped by the present Commissioner of Central Excise, Dibrugarh as he knows the meaning and main intention of the said two notifications i.e. 32/99 CE and 33/99 CE dated 08.07.99.

The signatory of the Verification of the written statement (Assistant Commissioner, P&V, Central Excise, Dibrugarh) should know the latest position of the case before submission of the reply before this Hon'ble Tribunal. Knowingly the fact the respondents are misleading the Hon'ble Tribunal, as such the Hon'ble Tribunal be pleased to call for the signatory of the Verification of the written statement (Assistant Commissioner, P&V, Central Excise, Dibrugarh) before the Hon'ble Tribunal for misleading the Hon'ble Tribunal.

Therefore, it appears that the reply of the respondents is completely false and baseless and misrepresenting the fact before the Hon'ble Tribunal.

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11.

That the applicant categorically denies the statements made in paragraph ... 14 of the written statement since the same are vague, false and baseled by Respondents have not cited even a single instance where the applicant acted as unbecoming of a Covt. servant. Applicant worked in different organizations on deputation (detail mentioned in para 13 above) with full satisfaction of the superior officers of that organizations. No where this type of problem arose, only the problem started when the then Commissioner, Central Excise, Dibrugarh, (whose instance impugned memorandum is issued) joined as Commissioner. So far the applicant's experience about the then Commissioner, Central Excise, Dibrugarh, it proves that she herself not so conversant with the Central Excise Act and Rules and allied laws properly. Whatever the subordinate officers stated or written she agreed with without asking/quarry to the applicant which is not a healthy practice. The applicant a quasi judicial authority and controlling officer of a Division with administrative power to exercise and implement the government policy for the interest of the Department is required to consult by the higher authority before taking any decision. After servicing the department since 1976 and other organization on deputation with good reputation and the officer who has been graded A+ Officer by the department how the applicant became a unbecoming of a Govt. servant within a short period of the then Commissioner resumed charges of the Dibrugarh Commissionerate. There are so many examples where the Commissioner (Appeals) and higher authorities written about the activities of then Commissioner that she has signed only on the subordinate notes without giving her personal comments and notes.

The applicant has already complied with the reply of the two charge sheet (Annexure- O and P) issued by the competent authority at the instance of the then Commissioner. All the charge sheet under memorandum mentioned by the respondent are on vindictive and biased attitude. Therefore, the applicant prays before the Hon'ble Tribunal to set aside and quash the impugned charge sheet issued under memorandum dated 22/25.09.2006 since the same has no merit and it is issued with malafide and vindictive attitude.

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12. That the applicant categorically denies the statements made in paragraph
15 of the written statement since the same are false and baseless. The
applicant has not violated any instruction issued by the superior officers.
The then Commissioner became so much vindictive to spoil the service

career of the applicant and for that she has written same thing without any specific examples/instances. The respondent forgotten the contents of the last line of the letter dated 25.07.2005 mentioned in para 4 hereinabove (Annexure-C) and its meaning as the then Commissioner, Dibrugarh not so well conversant with the departmental Act and Rules again and again mentioning to violate the set procedure and instructions. The applicant wants to draw the kind attention of the Hon'ble Tribunal that as a quasi judicial authority when the applicant allowed the eligibility of a particular case by observing all formalities and granting the party personal hearing and also observing the principle of natural justice, how the same quasi judicial authority can reject that genuine case. Moreover when the higher authority directed the applicant to take action on merit and keeping in mind that the principle of natural justice are not violated then how the applicant violated the instruction of the superior officer. If the respondent had any intention to stop the refund claim why at that time the respondent had not directed the applicant to file appeal before the appellate authority under the provision of Section 35 E of Central Excise Act, 1944. What was the intention of the then Commissioner and subordinate officers to bargain with the assessee by keeping the gun in the shoulder of the Divisional Officer i.e. the applicant.

13. That with regard to the statements made in paragraph 16 of the written statement the applicant begs to refer Commissioner (Appeals), Guwahati order dated 31.01.2006. In the order dated 31.01.06 that Commissioner (Appeal) Guwahati has written about the activities of the then Commissioner, Central Excise, Dibrugarh, it proves that the then Commissioner was not at all conversant with the latest instruction of the department and the judgment of different Court and Tribunals.

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14.

That the contention of the respondent in paragraph 17 of the written statement is not correct rather it again proves that the knowledge of the respondent about existing Central Excise Act and Rules. Sanction of refund and processing is also a part of adjudication as after allowing the eligibility of the Assistant Commissioner is to sanction refund by issuing speaking order either for sanction or rejection of the claims. It falls under Section 33 of the CEA, 1944. Sanction of refund is purely a quasi judicial work in nature. No refund can be rejected without according personal hearing i.e. natural justice to the claimant as per Hon'ble Supreme Court order. In this context Judgment of Hon'ble Bombay High Court is enclose as Annexure- E. As such the written statement of the respondent is false and baseless and with the intention to mislead this Hon'ble Tribunal by

misrepresenting the facts again and again.

15. | That the applicant categorically denies the statement made in paragraph 18 and further begs to state that refund claim under Notification No. 33/99 CE dated 08.07.99 does not fall under Section 11 B, which the respondent already agreed in paragraph 12 of the written statement. Moreover, the same Commissioner of Dibrugarh has allowed the Jorhat Division to pass the refund of Rs. 1.18 Crore to M/S Kakajan TE without pre-audit, how the same officer order in two different way on same issue i.e. both the cases under the notification No. 33/99 CE dated 08.07.99. Government circular No. 809/6/2005-CX dated 01.03.05 is applicable only for the refund under Sec 11 B of CEA, 1944. In this respect, the amended circular No. 857/15/2007/CX dated 02.11.07 is enclosed for information (Annexure- R). Wherein the procedure relating to sanction and pre-audit refund/rebate claims has been prescribed, it has been brought to the notice of the Board that various Court judgments have held that the procedure of pre-audit before sanction of refund amounts to interference with the quasi judicial function of the refund sanctioning authority. Here it is clearly mentioned, pre-audit refund/rebate but in notification No. 33/99 CE dated 08.07.99 only mention refund to be made by 15th of the next month, so how the respondents again and again stating the same Govt. circular in this case. Moreover, respondent submitted written

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Control Advantage of Thomas of The State of statement on 21,01.08 but the circular No. 4857/15/2007-CX dated 02.11.2007 issued by the C.B.E.C under F.No.268/24/2006-CX-8 dated 02.11.2007 i.e. two months before submission of written statement before this Hon'ble Tribunal. As such respondents should have gone through latest circulars/notification before submission anything to the Hon'ble Tribunal.

From the above it is proved that the respondents are misleading the Hon'ble Tribunal and the question of in-subordination and disobedience does not arise at all. The point has been clarified by the applicant in several occasions what the CESTAT, Kolkata has decided in its order dated 04.07.2006 in the case of M/S Napuk & Muttrapur T.E which is accepted by the Commissioner, Dibrugarh so it was the responsibility of the respondent to withdraw the impugned memorandum dated 22/25.09.06 against the applicant as soon as the respondents accepted the CESTAT, Kolkata order dated 04.07.2006 and conveyed to all Divisional Officers vide Commissionerate office letter dated 22.09.06 (enclosed as Annexure- S) and that order of the CESTAT already annexed in the applicant's reply to the memorandum No. 55/06 dated 15.11.2006. The then Commissioner, Dibrugarh failed to give true and proper guidance as pre provisions of law. The respondents vide letter F. No. II (39)9-Audit/Misc./DIB/2005/11314-17 dated 23.11.2006/06.12.2006 issued the procedures relating to sanction, pre-audit/post-audit and review of refund notification No. 32/99 and 33/99 both dated 08.07.99 (Copy enclosed as Annexure- T), which was required to issue long back i.e. as soon as accepted by the CESTAT's Kolkata order dated 04.07.2006.

16. That with regard to the statements made in paragraph 19 of the written statement, the applicant begs to state that the disciplinary proceedings in this case has not been issued following the proper law. How it is issued by force without any base and proper. As soon as the Commissioner accepted the CESTAT order, it was the responsibility of the respondents to drop/withdraw the disciplinary proceeding for which purpose and reason the then Commissioner should have informed the higher authority.

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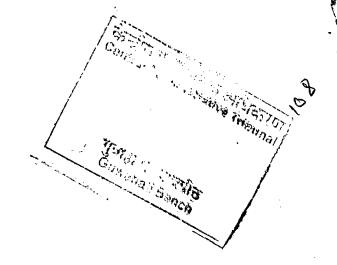
CORPUS AND THE WAY THE WAY That it is stated that after issuance of the impugned memorandum of charge sheet dated 22/25.09.2006, the respondent referred the matter to the C.B.I for further investigation which the respondents are not entitled to do under the relevant rules holding the field as because two investigations or inquiry proceeding on the same issue or subject cannot be continued simultaneously. The applicant was repeatedly summoned by the C.B.I authority for interrogation. The applicant being a law abiding person cooperated with the C.B.I authority as and when summoned by them. It is relevant to mention here that the respondents have referred the case to the CBI after the applicant approached this Hon'ble Tribunal challenging the validity and legality of the impugned memorandum dated 22/25.09.2006 through the instant O.A, with the sole intention to harass the applicant thorough the C.B.I. However, the applicant could not learn about the consequence of the C.B.I investigation although it appears that the C.B.I investigation is over, during the pendency of the O.A. In the facts and circumstances as stated above, the Hon'ble Tribunal be pleased to direct the respondents to submit the report of the C.B.I investigation before the Hon'ble Tribunal for proper adjudication of the O.A.

That it is stated that the decision cited by the respondent in Civil Appeal 18. No. 2168/06 decided on 21.04.2006 by the Hon'ble Supreme Court (Annexure-I of the written statement) is in fact does not represent the correct law of the land since the said decision is contrary to the earlier decision rendered by the larger Bench of three judges of the Hon'ble Supreme Court. Hence the case referred by the respondents i.e. Union of E India -Vs- Duli Chand does not lay down the correct law and the same is E distinguishable from the facts and circumstances of the present case.

That in the facts and circumstances as stated above the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet dated 22/25.09.2006 since the impugned memorandum has no merit after accepting the CESTAT, Kolkata order dated 04.07.2006 (Annexure- X of the O.A).

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VERIFICATION

L Shri Himangshu Ranjan Saha, son of Late Hem Ranjan Saha, aged about 57 years, working as Assistant Commissioner, Central Excise, Ashok Nagar, Ranchi, applicant in the instant Original Application, do hereby verify that the statements made in Paragraph 1 to 19 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 4th day of June 2008.

Heinaugsles Loujau Laka.

Central Administrative Tribunar 9 JUN Annexure - A Ğuwahati Ben**ch** GOVT. OF INDIA OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE DIBRUGARH -Milan Nagar 'F' Lane, P.O. C.R. Building, Dibrugarh- 786 003 Phone No.2314079/81/82 & FAX No. 0373-2312875/2315257, E-mail: com74 SPEED POST C.No.V(30)79/Appeals/05/2/) 53 The Deputy Commissioner. Central Excise, Jorhat, sect - Appeal before the Commissioner (Appeals), Customs & Central Excise, Guwahati against Order under C.No. V(18)112/ACJ/ REF/ 2004/2001 - 4 dated 16/05/2005 in the matter of M/s Kakajan Tea Estate - C/r. This has a reference to your office letter under C.No. V(18)120/ACJ/REF/Miso 3216 dated 11/08/2005 on the foregoing subject. Though an appeal is going to be filed against your Order dated 16/05/2005 under reference, you are directed not to withhold refund on this ground only. However, in order to ensure that revenue is safeguarded in case any amount is found senctionable, you may ontain undertaking from the claimants of refund to the effect that they shall pay the entire mounts refunded in the event of the Appellate Commissioner's decision in Department's avoiling Besides, you are urged upon to issue demand-can show the Notices for a viv of the amounts cironcously refunded and way the was in call-book till real of the proposed appeal. to initial case file is returned herewith. inclo:- Original case file

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Annexuse-B

GOVE OF INDIA OFFICE OF THE DEPUTY COMMISSIONER CENTRAL EXCISE DIVISION:: JORHAT

Station Godown Road, Jorhat 785001

Phone/Fax: 0376 2320006 E-mail:div7403 & cenexior@sancharnet.in

ORDER NO. 69 Dated: Place: Jorhat Guwahau a Guwahau a

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

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

The refund claims in question have been verified with the reliable PLA, TR-6 & invoices etc. as submitted by the applicant. The month wise statements of accounts as submitted by the applicant were verified and found that the applicant have debited an amount of Rs. 1,18,86,182.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only against payment of CENVAT/BED during the period from 25.07.1999 to 28.02.2003 in PLA A/C No.SH/103. So, a sum of Rs. 1,18,86,282.00 is found to be admissible for refund. The provisions in terms of the Notification No. 65/03-CE dated 06.08.2003 have also been examined and found that the total debit in PLA amounting to Rs. 1,18,86,282.00 is found eligible for sanctioning of refund. During the period under consideration, the said applicant paid the Central Excise duty against clearance of their goods from the CENVAT credit account amounting to Rs. 23,81,113.00 (Rupees twenty three lakhs eighty one thousand one hundred and thirteen) only. The said amount is not liable to be considered for refund.

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

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

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Cakajan T.E., P.O. Marjani, Dist. Jorhat, Assam, in terms of the Notification No. 3,3/99 CE dated 08.07,1999 covering the period from 25.07,1999 to 28.02,2003 subject to post-audit.

The subject refund of Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only is hereby sanctioned in terms of the Notification No. 33/99-CE dated 08.07.1999 after verification of eligibility and payment particulars. Any excess/erroneously refunded amount will be demanded as provided under the Notification No. 33/99-CE dated 08.07,1999 and the said applicant is liable to pay back the entire amount if so demanded under the Central Excise Laws.

I order accordingly.

(M.C. HAZARIKA) DEPUTY COMMISSIONER

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

Dated: 3/11/05

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

(M.C. HAZARIKA) DEPUTY COMMISSIONER

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

Dated: 3/11/05

Copy forwarded for information and necessary action to:

1. The Commissioner, Central Excise, Dibrugarh.

2. The Joint Commissioner (Audit), Central Excise, Dibrugarh along with copy of PLA, TR-6 and statement of duty paid for the period from 25.07.199 to 28.02.2003.

3. The Assistant Chief Accounts Officer, Central Excise, Dibrugarh.

(M.C. HÁZARIKA) DEPUTY COMMISSIONER



GOVT. OF INDIA Allan Nagar, Lane F. P. O. : (J.R. Building, Dibrogarb --SE 003-16500 E. Tel. : 0373-2314081. Fax : 0373-2315257TEDECS (Let) 11000

ICE OF THE COMMISSIONER OF CENTRAL EXCISE

DIBRUGARH

хо. ; V (1-) 19/Pre-Audit/ID1B/2005/,

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

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

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

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

- The Hon'ble Apex Court's observations in the case of M/s. Ginni Filament, even though made in gelation to a matter of a 100% EOU, has application in respect of exemption notifications in general in so far as the observations, e.g., that an exemption notification has to be read on its own terms, conditions therein cannot be ignored, and exemption notification has to be read strictly so far as eligibility is concerned. cannot be viewed as ah order in personam. Besides, similar view had also been taken by the Hon'ble Apex Court in other cases, reported at 1978 (2) ELT J 350 and 1995 (77) ELT 474. Such views of the Hon ble Apex Court cannot be dismissed summarily.
- In the case of M/s. Shivdham Industries, reported at 2002 (141) ELT 272, the Tribunal, while observing that an exemption under the Notification No. 33/99-CE, dated 08.07.1999 is not automatically defeated if the refund is not filed within the period of 7 (seven) days, also observed that the claim of refund in any case has been filed within the period prescribed under Section 11B. $\sqrt{}$
- In the case of M/s. Raghuvar India Ltd., reported at 2000 (118) ELT 311, while dwelling on the issue of limitation where none is prescribed in the statute, the Hon'ble Supreme Court observed that, "It is not for the court to import any specific period of limitation by implication, where there is really none, though courts may always hold when any such exercise of power have the effect of disturbing rights of a citizen that it should be exercised within a reasonable period." In the case of Corporation Bank, reported at AIR 2000 SC 76, the Supreme Court, on the issue of reasonable period, held that in respect of claim of money, specific period in the Limitation Act should be considered as reasonable time. For your benefit, relevant portions of the Limitation Act, 1963 is reproduced below :-

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

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

This issues the approval of the Commissioner.

ATTEST

Superintendent (VIG.). Central Excise. Diorugarh.

(M.R. MOHANTY) Joint Commissioner

Annexuse-D

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- 2. It serially numb consignee, do transport and goods and the
- 3. Do from the involved the of mentioning ln some cases on the invoices

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TR-6 Challan-

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5-10/204/4

It is noticed that doubts have been expressed in view of the fact that the goods like ready to eat packaged namkeen, bhujia, etc, conform to the description provided at both Sr. Nos. 29 and 30 of the Notification No. 3/2006-C.E., dated 1-3-2006. A question arises as to whether such goods would attract nil rate of duty under Sr. No. 29 or 8% duty under Sr. No. 30.

- 3. The matter has been examined. As the same items fall under two entries of the notification, the exemption of nil rate of duty would be available to goods covered by Sr. No. 29 of Notification No. 3/2006-C.E., dated 1-3-2006, even when the said goods are also covered by Sr. No. 30.
- 4. However, if the goods are 'ready to eat packaged food' falling under tariff item 2106 90 99 but which are not covered by the description provided at Sr. No. 29 of the notification, then the effective rate of duty will be 8% as provided at Sr. No. 30 of the notification.
 - 5. Field formations may be suitably informed.
 - 6. Hindi version will follow.
 - 7. Receipt of this Circular may kindly be acknowledged.

[Source: C.B.E. & C. Circular No. 841/18/2006-CX, dated 6-12-2006]

Refund of duty paid in cash for exemption to units in Kutch, Sikkim and North East — Excise Section 11B not applicable

Subject: Application of contents of Circular No. 682/73/2002-CX., dated 19-12-2002 to exemption Notification No. 39/2001-C.E., dated 31-7-2001 - Regarding.

Kind attention is invited to Circular 682/73/2002, dated 19-12-2002 [2003 (151) E.L.T. [77], issued by the TRU in respect of Notifications No. 56/2002 and 57/2002, both dated 14-11-2002, applicable for units availing area based exemption in J & K. In para 3 of the said Circular, following clarification was issued:

- "3. In this context, it may be pointed out that the "Refund" envisaged in the notifications is not on account of any excess payment of excise duty by the manufacturers, but is basically designed to give effect to the exemption. In other words, the mechanism has been adopted to operationalize the exemption envisaged in these two notifications. In view of this aspect of the matter, the provisions of Section 11B of the Central Excise Act, 1944 would not apply in the case of these notifications."
- 2. Representations have been received in the Ministry, seeking clarification as to whether the clarification given by the TRU in the above mentioned Circular will also be applicable for refund granted to units located in Kutch area availing benefit of Notification No. 39/2001, dated 31-7-2001.
- 3. The matter has been examined by the Board. It is noticed that when same scheme of refund is founded for other areas, the clarification issued with reference of J & K should hold good, and there should not have been any doubt. Therefore, it is clarified that clarification issued vide para-3 of Circular No. 682/73/2002, dated 19-12-2002, will also be applicable for units availing exemption under Notification No. 39/2001-C.E., dated 31-7-2001 (Kutch), 71/2003-C.E. dated 9-9-2003 and 56/2003-C.E., dated 25-6-2003 (Sikkim), 32/99-

act that the goods o the description 2006-C.E., dated 1-

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ed 19-12-2002 [2003 s No. 56/2002 and ailing area based g clarification was

Refund" envisaged payment of excise to give effect to the been adopted to vo notifications. In Section 11B of the the case of these

Ministry, seeking TRU in the above I to units located in 31-7-2001.

noticed that when ication issued with ve been any doubt. -3 of Circular No. for units availing 31-7-2001 (Kutch), 03 (Sikkim), 32/99DEPARTMENTAL CLARIFICATIONS

C.E. and 33/99-C.E. both dated 8-7-1999 (North East).

Trade and field formations may please be informed suitably.

5 Receipt of the same may be acknowledged.

6 Hindi version will follow.

2006]

[Source: C.B.E. & C. Circular, No. 842/19/2006-CX, dated 8-12-2006]

Invoice under Excise Rule 11 - Instructions for proper declaration of description

Attention of the Trade and industry is invited to Provisions of sub rule 2 of Rule 11 of Central Excise Rules 2002.

- 2. It has been provided in the said sub rule that "The inovice shall be serially numbered and shall contain the registration number, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon".
- 3. During the course of scrutiny of ER-1/ER-2 returns, it is noticed from the invoices issued by some of the manufacturers that they have merely reproduced the description given against a tariff item in the CETA, 1985 instead of mentioning the description of the goods being cleared under the said invoices. In some cases factory generated code nos allotted to goods/parts is mentioned on the invoices instead of specific description of the part/s being cleared.

To cite an example, description in respect of Television set cleared is given as "Reception apparatus for television, whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors". Reception apparatus for television, whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus. The proper description in this case would be -

Colour Television Set (Brand Name) of screen size up to CHS 85281211 -36 cm. Model

Similarly, in case of clearances of spares/parts/accessories of machinery/plants, the description of the part/s and its end use (for example spare part for textile machinery) should be mentioned on the Invoices instead of mentioning merely the Code No./part. The specific product as would normally be given in a product catalogue is relevant for the departmental officers to determine whether the transaction value given for the product conforms to Sec. 4 of the Central Excise Act, 1944. Therefore in the product description all parameters and technical specification having a bearing upon the price of the product must be mentioned.

4. All the Trade Associations and Chamber of Commerce and Industries are requested to bring the contents of this Trade Notice to the notice of their member constituents.

[Commissioner of Central Excise, Pune-III, Trade Facility No. 2/2006, dated November, 2006]

TR-6 Challans — Mention of assessee code mandatory

Attention of the Trade & Industries and all concerned is hereby invited that the Central Board of Excise & Customs has proposed to roll out EASIEST (Electronic Accounting System in Excise and Service Tax) in all Service Tax 5-10/204/4

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Annexure-E

2006 (201) E.L.T. 167 (Bom.)

IN THE HIGH COURT OF JUDICATURE AT BOMBA

Dr. S. Radhakrishnan and J.H. Bhatia, JJ. BOMBAY CHEMICALS LTD.

Versus

UNION OF INDIA

Writ Pelition No. 1114 of 1996, decided on 20-7-2005

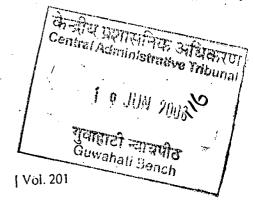
Refund order - Pre-audit before finalization - It is interference by audit cell in quasi-judicial proceedings - HELD: This was illegal and unauthorised especially as audit cell did not give any hearing to affected parties before finalization of its order thereby depriving them from their rights under the refund order - However, before passing of refund order it is not improper if it is verified from accounts/audit department whether incidence of duty had been passed on - Standing and Departmental Circular dated 13-9-1990 in this regard found to be bad - In facts of the case, refund order prior to audit restored - Section 11B of Central Excise Act 1944. [paras 8, 10, 11. 15]

Order - Judicial/quasi-judicial order - Binding effect - Communication to concerned parties is not necessary - Such orders become final/binding/ effective as soon as they are passed/made on date when they are signed by authority passing them - Their finality is subject only to appeal/revision - Practice of Government departments in administrative/policy matters wherein orders become final only after their issuance for information of public/communication to concerned party, cannot be applied to judicial/quasi-

judicial orders. [paras 13, 14]

Order - By Government Department - They become final and binding only after formal orders are issued for information to public or communication to concerned party - Prior to this stage, more notings of approval at certain levels in the Government, would not mean that order was passed. - It is true that in the Government Departments files mover upwards with the notes made by the officers at the different levels for approval. Sometimes even after approval, on reconsideration, orders are not actually issued and communicated to the concerned. In the Government Departments policy and administrative decisions are taken which may always be reconsidered and changed. Even a decision taken by the Minister heading the Department, may be reconsidered by the Cabinet taking into consideration all the pros and cons of the matter.

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EXCISE LAW TIMES

Not only this, sometimes, even cabinet decisions, are reconsidered. Therefore, merely because certain notings are approved at certain levels in the Government, it can not be said that the order is passed. Only after the formal orders are issued for information of public or communicated to the concerned party, such orders become final and binding. [para 13]

Order - Judicial/quasi-judicial order - Authority passing such order has to adjudicate the matter before them independently, impartially and without any external interference/control - If their decision are subject to external pressure/control, then they cannot be said to have been taken without fear/impartially. [para 14]

Order - Quasi-judicial authority - Discharge of functions by them has to be judicially, independently and without any control/interference. [para 10]

Order - Authenticity of - Original copy verified by court by calling records - Source from which party produced photocopy of the order found to be immaterial, and order found to be authentic. [para 7]

Interest - Imposition of - Assessee pushed to litigation by rejection of refund and deprived of payment are entitled to interest. [para 15]

Refund - Proceedings for - They are quasi-judicial in nature - Section 11B of Central Excise Act, 1944. [para 10]

Writ petition allowed

CASES CITED

S/Shri Jimmy Pochkanwalla with Sunita J. Masani REPRESENTED BY:

with Amit Jajoo, M/s. N.C. Dalal & Co., for the Appellant.

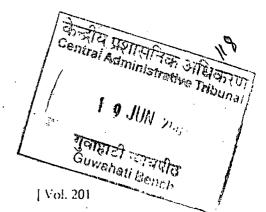
S/Shri R.V. Desai, Sr. Counsel with S:M. Shah with A.S. Rao, for the Respondent.

[Judgment per: J.H. Bhatia, J.]. - To state in brief the petitioners are the holder of Central Excise Registration for the manufacture of "Toys, Brand Mosquito Coils" (the Product in brief). According to them, the Product comes within the definition insecticides, classified under Tariff Item No. 68 and is eligible for, exemption under Notification No. 55/75, dated 1-3-75 as amended by Notification No 62/78 up to 31st October, 1982 and was exempted from 1-11-82 to 28-2-86 under Notification 234/82, dated 1-11-82. The product is classified under Chapter sub-heading No. 3808.10 of Schedule to the Central Excise Tariff Act, 1985 and is chargeable to 'NIL' rate of duty, up to 28-2-1994. The Assistant Collector Central Excise allowed the exemption but the Collector Central Excise (Appeals) disallowed the exemption. That order was challenged before the CEGAT by the petitioners and Special Bench of the CEGAT by an order dated 19th March 1990 [1990 (49) E.L.T. 431 (Tribunal)] held that the product is insecticide. The Department preferred an Appeal No. 4817/90 before Hon'ble Supreme Court challenging the order of the CEGAT. The Appeal was dismissed by the Supreme Court by an order dated 28-2-94 [1994 (70) E.L.T. A155 (S.C.)]. Therefore, it is no more in dispute that the product is insecticide and is exempted from

BOMBAY CHEMICALS LTD. v. UNION OF INDIA

- Excise duty. 2. The petitioners submitted 15 refund claims different periods from 27th September 1979 to 28th February, 1994 for different amounts paid towards the excise duty from time to time as required by the department. Total claim is for Rs. 13,17,34,703.65. The Petitioners contended that personal hearing was given by the Respondent Nos. 3, C.P. Goel, the then Assistant Collector (Excise) to the Petitioners and they were also represented by their counsels. After hearing the Petitioners and the representative of the Department, the Assistant Collector (Excise) passed an order dated 22nd March, 1995, whereby he sanctioned refund claim of Rs. 67,79,284.95 for the duty paid during 27th September, 1979 to 31st December, 1983 to the Petitioners on the ground that he had not passed over the said liability to the customers. He came to conclusion that the duty paid by the Petitioners from 1-1-84 to 28-2-94 was actually passed over to the customers, and therefore, though the amount of Rs. 10,43,41,863/- is liable to be refunded. It could not be paid to the Petitioner but was liable to be credited to the Consumer Welfare Fund established under Section 12C.
- 3. It is contended that the order of the Assistant Collector passed on 22nd March, 1995 had become final and if department was aggrieved by the same, it could challenge the same by way of an Appeal Revision. But no such procedure was adopted and the then Assistant Collector Respondent No. 2 passed the impugned order dated 12th October, 1995 without giving an opportunity of hearing to the Petitioners and reversed the earlier order of Assistant Collector, the Respondent No. 3. In this Writ Petition, the Petitioners seek declaration that the order dated 12th October, 1995 is Non-est, illegal and bad in law and direction to quash and set aside the same. The Petitioners also seek declaration that the order dated 22nd March, 1995 passed by the Respondent No. 3 is proper, legal and binding on the Central Excise Department. The Petitioners also seek direction to the Respondent No. 1 to forthwith make payment of refund claim as per the order dated. 22-3-95 with interest at such rate as this Court may deem fit and proper. In alternate, the Petitioners claim entire refund of Rs. 13,17,34,703.65 with interest.
- 4. The Respondent No. 2 H.S. Sharma, the Assistant Commissioner, who had passed the impugned order dated 12-10-95, filed an affidavit on behalf of the Respondents to contest the Writ Petition. It is contended by the Respondents that so called order dated 22-3-95 passed by the Respondent No. 3, C.P. Goyal was infact a draft order which was submitted for pre-audit before passing the final order. However, during the pre-audit, it was found that the petitioners are not entitled to claim any refund because even for the period from 27th September, 1979 to 31st December, 1983., they had actually passed over the liability of excise duty to the customers. As the product was exempted from levy of the duty, and the incidence of the duty was passed on to the customers the amount could be refunded only by credit to the Consumer Welfare Fund. It is contended that alleged order dated 22nd March, 1995 was infact never passed nor it was communicated to the Petitioners and unless, the order is communicated to the Petitioners, there are not entitled to claim any benefit out of the same. It is also contended that as the said order was not communicated to the Petitioners by the Department nor the Petitioners have disclosed the source from where they have come to know about the said order, they are not entitled to any relief from this court on the basis of alleged order dated 22nd March 1995. According to the Respondents, the Petition is devoid of any merit and is liable to be dismissed.
 - 5. Heard learned counsels for both the parties. We also called original

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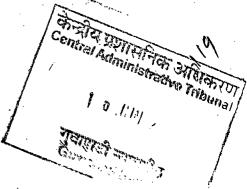


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EXCISE LAW TIMES

record for our perusal.

- 6. Admittedly from 1979, the Petitioners had claimed that their product is exempled from excise duty and they had also made some payments underprotest from 21-...-79 onwards. There was a long drawn litigation before the different fora as to whether the said product was exempted from excise levy or not. By the order dated 19th March, 1990, the Special Bench of CEGAT allowed the Appeal of Petitioners holding that the product is insecticides and is exempted from excise duty. Appeal of the department against the said order was dismissed by the Supreme Court on 28-2-94. Therefore, now there is no dispute that the amount of Rs. 13,17,34,703.60 recovered from the Petitioners towards excise duty from 27th September, 1979 to 28th February, 1984 is liable to be refunded. However, it is also not in dispute that if incidence of the duty has been passed on by the assessee to the customers then it is not entitled to claim that amount on the doctrine of Unjust Enrichment The Union Government has established consumer Welfare Fund under Section 12C of the Central Excise Act and the refund amount is to be credited to the said Consumer Welfare Fund if incidence of the duty is passed over to the customers. However if incidence of the duty is not passed on to the customers by the assessee, the amount is payable to the assessee.
- 7. Even though the Respondents denied that alleged order dated 22nd March, 1995 was passed by the Respondent No. 3 the then Assistant Collector, the Petitioner produced xerox copy of that order which purports to bear signature of the Respondent N.S. 3 C.P. Goel, the then Assistant Gollector (Appeals). In the order, there is noting that file be sent for pre-audit to the Assistant Collector (Audit) along with all the remaining records. That noting is also signed by C.P. Goel. As authencity of that copy was challenged by the Respondents we had to direct the department to produce the original record. On careful perusal of the record, we find that the copy produced before the Court is infact a true xerox copy of the original order which is in the office record. Hence, the source from which the Petitioners got the copy is immaterial. The contention of the Respondents is that the said order dated 22nd March, 1995 was not an order in real sense and could be effective because it was sent for pre-audit and only after clearance by the Assistant Collector (Audit) final order could be passed by the Assistant Collector and on communication of that order it would be effective. Mr. Pochkanwala, the learned counsel for the Petitioners vehemently contended that the proceedings for determination of refund claim are quasi judicial and therefore, the competent authority, that is, Assistant Collector has to pass the order without any external control. He also contended that once the Respondent No. 3 who was the competent authority, heard the parties and after going through the record, had passed the order on 22nd March, 1995, the said order was final, effective and binding on the parties. Communication of the said order to the Petitioners was irrelevant. He further contended that after the final order was passed, it could ... (sic) subject to the pre-audit by another officer of ... (sic) Department. According to him such pre-audit ... (sic) passing of the judicial order by the competent authority is not permissible under our judicial system and has to be ignored.
- 8. Record reveals that the said order dated 22-3-95 along with the complete record was submitted to the Assistant Commissioner (Audit) for pre-audit. Incidentally during the relevant period, the Respondent No. 2 H.S. Sharma himself was the Assistant Commissioner (Audit) and after pre-audit of the said order and the record he passed the impugned order dated 12th October, 1995. Admittedly, the Respondent No. 2. H.S. Sharma had not heard the Petitioners or their counsel and without hearing them, he passed the impugned order and



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BOMBAY CHEMICALS LTD. v. UNION OF INDIA

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there by deprived the Petitioners of their rights conferred on them by the earlier order dated 22-3-95. Mr. Pochkanwalla, the learned counsel for the Petitioner vehemently contended that the earlier order passed by the Respondent No. 3 could be challenged by the Department by Appeal or Revision and could be reversed, set aside or modified by the Appellate or Revisional authority. The Respondent No. 2 was not the Appellate or Revisional authority but was officer of the rank of the Respondent No. 3. As the Department had not challenged the order dated 22-3-95 by filing revision or appeal, the said order became final and binding. The Respondent No. 2 had no jurisdiction to pass any different order about the same subject and, therefore, the order dated 12th October, 1995 passed by him is non-est, illegal and of no effect. On the other hand, Mr. Desai, the learned senior counsel for the Respondents supported the impugned order on the ground that earlier order was not at all an order because it was subject to preaudit and because final order was yet to be passed after pre-audit. He also contended that unless the order is communicated to the assessee it does not become final and binding.

9. It is not in dispute that proceedings before the Assistant Collector adjudicating the claim for refund of the excise duty are of quasi judicial nature. Relying upon its two earlier decisions in Mahadayal v. Commercial Tax Officer (AIR 1958 SC 667) and Rajagopal Naidu v. State Transport Appellate Tribunal - AIR 1964 SC 1573, Their Lordships of the Supreme Court observed as follows in Orient Paper Mills Ltd. v. Union of India - 1978 (2) E.L.T. (J345) (S.C.) —AIR 1969 SC 48.

"If the power exercised by the Collector was a quasi judicial power as we hold it to be that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or quasi judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause: yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments, they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved party."

10. Relying on the above observations, in a similar case in *Rewa Gases* Pet. Ltd. v. Assistant Collector of C.Ex.: Satana - 2002 (140) E.L.T. 18 (M.P.) the Madhya Pradesh High Court has observed as follows:

It is not in dispute that the proceedings before the Assistant Collector for adjudicating the claim for refund of excise duty are of quasi judicial nature. He must act independently and impartially. His discretion cannot be controlled by the directions of the superiors in that very case. The procedure of pre-audit of such a judicial discretion is unbeard of. It amounts to pulling the strings from the backdoor and renders the adjudicating officer as a pupper in the hands of others. The tax-collector is already considered as leaning in favour of the administration and if his quasi judicial discretion is controlled by laying down the procedure of pre-audit justice to the assessee would be a casualty. The officer is bound by the statutory provisions and he must appreciate the evidence and material on record by using his own judgment. His attention can be invited to general principles and norms rele-

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relevant for adjudication of the claim but there cannot be a direct or indirect interference in the case which he is handling. The Central Board or the Collector (Internal Audit) has no jurisdiction or authority to direct an officer to exercise his discretion in a particular way. The discretion is vested in the adjudicating officer. While the adjudicating officer performs the statutory or particularly quasi the judicial duty, the superior authorities cannot direct that the discretion should be exercised one way or the other. The adjudicating officer must consider the case independently, uninfluenced by the depar mental instructions, on basis of evidence prought before him and also on the basis of all the facts placed before him. The officer is not bound by any administrative instructions. The questions of fact and law, which may be determined by him after full application of mind in an objective manner without feeling in any way controlled by any administrative instructions. "

From the aforesaid two authorities of the Supreme Court and Madhya Pradesh High Court, it is clear that the authority exercising quasi judicial power has to discharge his function judicially, independently and without any control or interference. According to the Respondents, in view of certain standing orders and the circular dated 13th September, 1990 from Central Board of Excise and Customs after the Assistant Collector prepares the order, he has to submit the same to audit cell for pre-audit and after the pre-audit, the concerned Assistant Collector should plass the final order accordingly. Infact, it amounts to direct interference in the judicial order passed by the competent authority in the quasi judicial proceedings by some officers of the audit cell and thus such officer of the audit department controls the final decision of the authority vested with quasi judicial power. It cannot be supported in view of the observations of the Supreme Court in Orient Paper Mills v. Union of India (Supra).

It is possible that before passing final order in the proceedings for refund claim, the concerned Assistant Collector may get the record about the payment of duty, about the passing on of the incidence of the duty to the customer or otherwise verified from his office or even from the Accounts or Audit Department, But if after being satisfied that claim is justified, he passes the order, it becomes final. Thereafter, there can not be any pre-audit of the order passed by the Assistant Collector.

On careful perusal of the original record, we find that the concerned officers made the notings on the basis of claim and the office record. Not only this before passing the impugned order dated 22nd March, 95, the Respondent No. 3-C.P. Goel had directed that file be submitted to the Additional Director (Cost) to ascertain whether the assessee had charged and recovered the element of duty from their customers for the period from 27-9-79 to 31-12-83 and as per his directions, the file was infact submitted to Additional Director. (Costs). The Office Note dated 24-1-1995 reveals that the file was returned by Additional Director (Costs) with the following remarks:

"It appears from the examination of the above said records that the assessee had not charged and recovered excise duty from the customers during the period from 27-9-79 to 31-12-83".

After perusal of the said noting and some other noting in the file, the Respondent No. 3-C.P. Goel passed the impugned order dated 22-3-95. It is material to note that in the office record, there are two sets of the said order. Both bear signatures of the Respondent No. 3-C.P. Goel. One set is immediately after the aforesaid noting in the beginning of the record and another set is to be found from page No. 367 to 389. On the second set after his signature, below the order, there is

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endorsement about forwarding the copy to the Assistant Collector (Review) Superintendent Range, Hand file, Master file and Spare. Below that there is no mention that this order was to be submitted for pre-audit. However, on the first set of order, which is found immediately after the notings referred above, below the signature of the Respondent No. 3, there is handwritten note that the file may be sent for pre-audit to the Assistant Collector (Audit) alongwith all the relevant records and it is also signed by the Respondent No. 3 on 22-3-95. This appears to be in view of the departmental standing instructions and the circular.

- 13. Admittedly, copy of this order was not served on the Petitioners nor the order was communicated to them. Mr. Desai, the learned counsel for the Respondent contended that unless the order was actually communicated, it could not be final nor it could be binding. He contended that in the Government Departments, it is common practice that the notes are prepared, signed and put up for approval of the higher authorities and only after the notes are finally approved orders are issued and communicated to the parties and only then order becomes effective. According to him, in view of this practice, order passed by the Respondent No. 3 was infact not order but office note which was forwarded for pre-audit and, thereafter, the Respondent No. 2 passed the final order and it was communicated to the Petitioners. On behalf of the Respondent, reliance was placed on Bachitter Singh v. State of Punjab - AIR 1963 SC 395 wherein minister had made a noting on the file but no order formally in the name of Governor was issued or communicated to the person concerned. In that context, it was held that mere noting of the minister did not amount to making an order as it could be reconsidered by the counsel of the ministers. It is true that in the Government Departments files move upwards with the notes made by the officers at the different levels for approval. Sometimes even after approvel, on reconsideration, orders are not actually issued and communicated to the cocerned. In the Government Departments policy and administrative decisions are taken which may always be reconsidered and changed. Even, a decision taken by the minister heading the Department, may be considered by the Cabinet taking into consideration all the pros and cons of the matter. Not only this, sometimes even cabinet decisions, are reconsidered. Therefore, merely because certain notings are approved at certain levels in the Government, it can not be said that the order is passed. Only after the formal orders are issued for information of public or communicated to the concerned party, such orders become final and binding.
- 14. However, practice followed in the Government Departments in the administrative on policy matters cannot be applicable to the judicial or quasi judicial proceedings. An authority exercising judicial powers or quasi judicial powers has to adjudicate the matter before him independently, impartially and without any external interference or control. If the decision of such judicial authority depends on some external pressure or control, the decisions cannot be taken impartially without fear or favour. The external control or interference in the decision making process of judicial authority is totally unknown to the judicial system of this country. The judicial or quasi judicial order becomes final binding and effective as soon as it is made or passed. It's finality is subject to Appeal or Revision only and it is not dependent on communication of the order to the concerned party. In Cosmic Radio v-Union of India & Another 1983 (12) E.L.T. 84 (Bom.) almost on similar facts, the learned Single Judge of this Court made following observations:

"The communication of the order passed by Mr. Kullarwar is merely an administrative and the failure of the respondents to inform passing of

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such order would not take away the effect of the order of Mr. Kullarwar. The mere fact that the order was never communicated to the petitioners is no ground to hold that the order of Mr. Kullarwar is not in existence. The order passed by the Assistant Collector of Central Excise comes into operation as soon as the same is signed and is not made dependant upon the communication of the same to the concerned party. In may judgment the stand taken by the successor of Mr. Kullarwar is totally erroneous and his action in issuing fresh show cause notice to the petitioners and calling upon them to re-agitate the matter before him is contrary to the provisions of the law".

We fully agree with the above observations. We are also supported by Supreme Court authority in *Collector of Central Excise v. M.M. Rubber Company.* - 1991 (55) comes into force or order becomes operative or effect becomes effective on and from the date when it is signed by him.

15. In view of this legal position, we hold that the authority in Bachitter singh is of no help to the Respondents. The order dated 22nd January, 1995 became final, binding and effective as soon as it was signed by the Respondent No. 3. The pre-audit after that was totally illegal and unauthorised. The Respondent No. was totally wrong in passing the impugned order on 12-10-1995. Therefore, the said order will have to be treated as without jurisdiction and non-est and is liable to be quashed. The order passed by the Respondent No. 3 on 22nd March, 1995 will have to be restored. The Petitioners would be entitled to recover payment of refund of amount of Rs. 67,79,285.94 on the basis of order dated 22nd No. 2 they were deprived of the payment and they were pushed to the further litigation. Therefore, in our considered opinion the Petitioners should be entitled to recover the said amount with interest at the rate of 9% p.a.

16. In the result, the Writ Petition succeeds and the rule is made absolute in terms of prayer clause (a), (b) and (c). The Respondent No. I shall make the payment of amount of Rs. 67, 79,285.94 to the Petitioners ... (sic) interest at the rate of 9% p.a. from 22nd March, 1998 till the date of payment. Payment shall be made within four weeks from this date. No order as to costs.

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Annexure-

Administration Pribuna

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TimeTrim

Zunjarrao Bhikaji Nagarkar vs Union Of India>1999(08)LCX0324

1999(08)LCX0324

IN THE SUPREME COURT OF INDIA S. Saghir Ahmad and D.P. Wadhwa, JJ.

ZUNJARRAO BHIKAJI NAGARKAR Versus

UNION OF INDIA

Civil Appeal No. 4294 of 1999, decided on 6-8-1999

Cases Quoted

U O.I. v. K.K. Dhawan — 1993 (2) SCC 56 — Distinguished [Paras 11, 15, 26, 38] V.D. Trivedi v. U.O.I. — 1993 (2) SCC 55 — Noted [Para 15] U.O.I. v. R.K. Desai - 1993 (2) SCC 49 - Noted [Para 15] U.O.I. v. A.N. Saxena - 1992 (3) SCC 124 - Noted [Paras 15, 26] S. Govinda Menon v. U.O.I. - AIR 1967 SC 1274 - Noted [Para 15] U.O.I. v. Upendra Singh — 1994 (3) SCC 357 — Distinguished [Paras 16, 26, 38] D.I.G. of Police v. K.S. Swaminathan 1996 (11) SCC 498 — Distinguished [Paras 17, 38] M.S. Bindra v. U.O.I. — 1998 (7) SCG 310 — Noted [Paras 18, 38] Hindustan Steel Ltd. v. State of Orissa — 1978 (2) ELT (J 159) (S.C.) — Noted [Paras 19, 38] Madan Mohan Choudhary v. State of Bihar -- 1999 (3) SCC 396 -- Noted [Paras 20, 38] State of Madhya Pradesh v. Bharat Heavy Electricals — 1998 (99) ELT 33 (S.C.) — Noted [Para 22] Government of Tamil Nadu v. K.N. Ramamurthy - 1997 (7) SCC 101 - Noted [Paras 25, 38] State of Punjab v. Ram Singh — 1992 (4) SCC 54 — Relied on [Paras 27, 38] Tetar Gope v. Ganauri Gope — AIR 1968 Patna 287 — Overruled [Para 35] Rajasthan Pharmaceuticals Laboratory v. State of Karnataka — 1981 (1) SCC 645 — Relied on [Para 36]

Advocated By: S/Shri Raju Ramachandran, Senior Advocate, H. Ahmadi, L.C. Agrawala and Dr. Rajeev B. Masodkar, Advocates, for the Appellant.

S/Shri Harish Chandra, Senior Advocate, Ms. Kanupriya Mittal and V.K. Verma, Advocates, for the Respondents.

[Judgment per : D.P. Wadhwa, J.]. - Leave granted.

- 2. Appellant Zunjarrao Bhikaji Nagarkar was posted as Collector of Central Excise, Nagpur in the year 1995. Collector is now called Commissioner after amendment of the Central Excise Act, 1944 (for short the 'Act') by the Finance Act of 1995. Presently the appellant is posted as Director, National Academy of Customs, Excise and Narcotics, Mumbai. He was served with a memorandum dated September 2, 1997 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 informing him that the President proposes to hold an inquiry against him on the allegation that he favoured M/s. Hari Vishnu Packaging Ltd., Nagpur (assessee) by not imposing penalty on it under Rule 173Q of the Central Excise Rules, 1944 (Rules' for short) when he passed an Order-in-Original No. 20/95, dated March 2, 1995(sic) holding that the assessee had clandestinely manufactured and cleared the excisable goods wilfully and evaded the excise duty and had ordered confiscation of the goods.
- 3. The appellant approached the Central Administrative Tribunal, Mumbai (CAT) challenging the proposed inquiry by filing Original Application No. 250 of 1998 on March 18, 1998. While admitting the application CAT granted interim relief and stayed the disciplinary proceedings against the appellant. This application was, however, dismissed by CAT by order dated August 12, 1998 with the result the interim order stood vacated Immediately thereafter the appellant filed a writ petition in the Bombay High Court, it being Writ Petition No. 4717 of 1998. It was dismissed in limine by a Bench of the High Court by order dated September 7, 1998. This led the appellant to come to this Court in appeal by filing Special Leave Petition. While issuing notice on the Petition this Court granted interim stay.

The appellant has challenged the initiation of disciplinary proceedings against him. Before we consider his pleas we may as well note sequence of events leading to the issuance of the memorandum dated September 2, 1997.

4. Section 33 of the Act gives powers to Central Excise authorities to adjudicate. Under this Section 'where by the rules made under the Act anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged without limit, by a Commissioner of Central Excise.'



In exercise of powers conferred by Section 33 of the Act the appellant held adjudication proceedings against the assessee and two others. A show cause notice was issued to the assessee on the following grounds:-

- "(a) It had clandestine y cleared 2,55,000 Nos. of HDPE woven sacks totally valued at Rs. 13,77,000/without payment of Central Excise duty amounting to Rs. 4,81,950/- (including the 95,000 Nos. of HDPE sacks seized in transit) without cover of GP 1's and without recording the productions, clearance in Central Excise records in contravention of Central Excise Rules 9, 49, 52A, 53, 173G and 226 of Central Excise Rules, 1944. Hence duty of Rs. 4,81,950/-appeared recoverable from them under Rule 9 (2) of Central Excise Rules, 1944 read with proviso (i) to Section 11A of CESA, 1944.
- (b) It appeared to have wilfully with the intention to evade Central Excise duty, cleared clandestinely 95,000 Nos. of HDPE sacks valued at 4,18,000/-without recording in Central Excise records, without issue of Central Excise gate pass and without payment of Central Excise duty. These goods seized in transit along with Truck No. 4145 on 16-1-1994 appeared liable for confiscation under Rule 173Q of CESA, 1944;
- (c) It also appeared to have wilfully not recorded the production of 25,500 Nos. of 'L' shaped HDPE sacks valued at Rs. 1,27,500/- in their RG 1 register with the intention to clear the same clandestinely without payment of duty as this quantity was found in excess than the recorded balance and therefore appeared liable to confiscation under Rule 173Q of the Central Excise Rules, 1944.
- (d) It also appeared liable for penal action under Rule 173Q of the Central Excise Rules, 1944."
- 6. The assessee was asked to show cause as to why Central excise duty of Rs. 4,81,950/- be not recovered from him under Rule 9(2) read with proviso to Section 11A of the Act and why not 95,000 numbers and 25,500 numbers of HDPE bags seized in transit and from its factory premises be confiscated and why penalty be not imposed on it under Rule 173Q of the
- 7. After examining the evidence on record and hearing the assessee the appellant by his Order-in-Original No. 20 of Rules. 1995 held as under :-

"In view of the foregoing, I hereby pass the following order :-

I confirm the excise duty of Rs. 3,57,000/- on 25,500 Nos. of HDPE woven sacks removed by Noticee-1 clandestinely under Rule 9(2) of the Central Excise Rules, 1944 read with proviso to Section 11A of the CESA, 1944.

95,000 bags cleared clandestinely by Noticee-1 and seized on 16-1-1994 are liable for confiscation under Rule 173Q of C. Ex. Rules, 1944. However, I find that the goods had been released provisionally on execution of bond for the full value of the goods and cash security of Rs. 1 lakh. As the goods are not available for confiscation, I appropriate the amount of Rs. 10,000/- in lieu of confiscation.

I order confiscation of 'L' shaped 25,500 Nos. of HDPE woven sacks valued at Rs. 1,27,500/- under Rule 173Q of C. Ex. Rules, 1944. I however, allow the goods to be redeemed on payment of Rs. 10.000/- (Rs. Ten Thousand only)."

8. Appellant directed release of the vehicle from where the goods were seized by appropriating the cash security or Rs. 10,000/- in lieu of confiscation. He said the owner of the vehicle was a transporter. He did not impose any penalty on the transporter but cautioned him not to repeat such act as the same would be viewed seriously in future. As regards the third noticee he was also cautioned.

9. Under Section 35B of the Act an appeal lies to the Customs, Excise and Gold (Control) Appellate Tribunal (Appellate Tribunal) against a decision or order passed by the Commissioner of Central Excise as an adjudicating authority. Powers have been conferred on the Central Board of Excise and Customs (Board) under Section 35E of the Act to pass के जीव प्रशासनिक अधिकारण certain orders. This Section, in relevant part, is as under :-Contral Administrative Mouna3/31/2008

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Board may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

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- (3) No order shall be made under sub-section (1) or sub-section (2) after the expiry of one year from the date of the decision of order of the adjudicating authority.
- Where in pursuance of an order under sub-section (1) or sub-section (2) the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of Section 35B shall, so far as may be, apply to such application.

(5)

- 10. By order dated February 26, 1996 made under Section 35E of the Act Board directed the appellant to file appeal to the Appellate Tribunal to determine whether his Order-in-Original No. 20/95, dated March 20, 1995 against the assessee was correct, legal and proper and whether the appellant ought to have imposed penalty. Accordingly appeal was filed before the Appellate Tribunal which, it is stated, is still pending.
- 11. Mr. Raju Ramachandran, learned Senior Advocate, appearing for the appellant, raised the following points in support of the appeal:-
- 1. Adjudication order by the appellant is quasi-judicial in nature whereby he confirmed the confiscation of the goods and the duty demanded. He did not choose to impose any penalty in the facts and circumstances of the case. Merely on that ground he could not be subjected to the disciplinary proceedings.
 - 2. The undisputed facts which appear from the record are as follows :-
- (a) Admittedly by the said order, the goods in question stood confiscated and the duty demand amounting to Rs. 3,57,000/- stood confirmed.
- (b) The memo of charge read with the imputation of misconduct only alleged that the appellant was in error by not having imposed a penalty but there is no allegation of any corrupt motive or any familiarity with the party.
- (c) The aforesaid is further buttressed by the fact that the Department does not want to produce any witness and the list of documents only pertain to the record of this case.
- 3. In view of the above, the allegations made in the charge-sheet do not show any culpability on the part of the petitioner nor do they amount to misconduct. That being so, the present charge-sheet is liable to be quashed because on the face of it, no misconduct is disclosed which is a *sine qua non* to the maintainability of any charge-sheet. In this context, the appellant relies upon the analogy underlying Order 7, Rule 11, CPC and Section 482 of Cr. P.C. for quashing of FIRs.

4. Even otherwise, as per the decision of this Court in *Union of India and Others* v. K.K. Dhawan [(1993) 2 SCC 56], a charge-sheet can only be issued if there is *prima facie* material. In the present case, there is no material let alone *prima facie* material, rendering the charge-sheet void *ab initio*.



- 5. A perusal of the statement of imputations annexed along with the charge-sheet demonstrates that the case of the respondents is that by having committed an error of law which was favourable to the party, the appellant has shown favour. On the face of it, such conduct cannot constitute favour as required to sustain a charge of a misconduct. In other words, in the submission of the appellant committing an error of law does not amount to showing of favour which is the *sine qua non* for the maintainability of the charge-sheet.
- 6. An error of law, assuming it was committed can only be corrected by recourse to the Appellate Forum.
- 7. Provisions of Rule 173Q are not mandatory and the discretion vests with the adjudicating authority whether to impose any penalty or not in the circumstances of the case. Section 11AC was introduced in the Act by Finance (No. 2) Act, 1996, w.e.f. September 28, 1996, under which levy of penalty is now mandatory.
- 12. In answer to these pleas raised by the appellant Mr. Harish Chandra, learned Senior Advocate for the Union of India submitted that there was sufficient material to proceed against the appellant and that the CAT and the High Court were right in not interfering in the disciplinary proceedings at the very threshold. He said the appellant would have the opportunity to defend himself in the proceedings which have been initiated against him. He said provisions of Rule 173Q are mandatory and that Section 11AC also mandates levy of penalty.
- 13. In the course of the arguments in support of the rival contentions we were referred to various judgments of this Court. Before we examine these judgments we may set out the provisions of Rule 173Q and Section 11AC:-

"173Q.Confiscation and penalty. - (1) If any manufacturer, producer, registered person of a warehouse or a registered dealer -

(a) removes any excisable goods in contravention of any of the provisions of these rules; or

		•	The state of the s
	•	for any excisable goods manufactured	nroduced of stored by him; of
		for any excisable goods manufactured	i, produced of significant
(b)	does not account	ior arry excisable goods	

(bb)

(bbb)

(c)

(d) contravenes any of the provisions of these rules with intent to evade payment of duty;

then, all such goods shall be liable to confiscation and the manufacturer, producer, registered person of a warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (b) or clause (c) or clause (d) has been committed, or five thousand rupees, whichever is greater."

"11AC. Penalty for short-levy or non-levy of duty in certain cases. - Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement, or suppression of facts, or contravention of any of the

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provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A shall also be liable to pay a penalty equal to the duty so determined:

Provided that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account."

- 14. Section 37 of the Act empowers the Central Government to make rules carrying into effect the purposes of the Act. sub-section (5) of Section 37 is relevant which is as under :-
- "(5) Notwithstanding anything contained in sub-section (3), the Central Government may make rules to provide for the imposition upon any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder, a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater."

Reference may now be made to a few decisions cited at the Bar.

15. In Union of India v. K.K. Dhawan - [(1993) 2 SCC 56] respondent was working as Income Tax Officer. A charge Memorandum was served on him that it was proposed to held an inquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In the statement of article of charge framed against him, it was alleged that he completed assessment of nine firms in "an irregular manner, in undue haste and apparently with a view to conferring undue favour upon the assessee concerned". An application filed by the respondent against the proposed action was allowed by the Central Administrative Tribunal and it was held that orders passed by the respondent as Income Tax Officer were quasi-judicial and could not have formed the basis of disciplinary action. Charge Memorandum was, thus, set aside. The question before this Court was whether an authority enjoyed immunity from disciplinary proceedings with respect to matters decided by him in exercise of quasi-judicial functions. After examining the early decisions of this Court in V.D. Trivedi v. Union of India [(1993) 2 SCC 55]; Union of India v. R.K. Desai [(1993) 2 SCC 49]; Union of India v. A.N. Saxena [(1992) 3 SCC 124] and also in S. Govinda Menon v. Union of India [AIR 1967 SC 1274] this Court held as under:

"Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act but we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following case:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty:
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers; Central Administratory Tribunal

(v) if he had acted in order to unduly favour a party;

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(vi) if he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke said long ago "though the bribe may be small yet the fault is great".

The instances above catalogued are not exhaustive, however, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

- 16. In Union of India & Ors. v. Upendra Singh [(1994) 3 SCC 357] question was again raised if the Central Administrative Tribunal was right in staying the disciplinary proceedings against the respondent who was served with a charge-sheet. It was alleged against him that while working as Deputy Commissioner of Income-Tax, he gave illegal and charge-sheet. It was alleged against him that while working as Deputy Commissioner of Income-Tax, he gave illegal and charge-sheet. It was alleged against him that while working as Deputy Commissioner of Income-Tax, he gave illegal and charge-sheet. It was alleged against him that while working as Deputy Commissioner of Income-Tax, he gave illegal and charge-sheet. It was alleged against the respondent had while working as Deputy Commissioner of Income-Tax, he gave illegal and Income-Tax Act were pending before him Tax Act even though at the relevant time proceedings under Section 144A of the Income-Tax Act were pending before him Tax Act even though at the relevant time proceedings under Section 144A of the Income-Tax Act were pending before him Tax Act even though at the Central Board of the CCS (Conduct) Rules, 1964. In the CCS (Conduct) Rules, 1964. Direct Taxes and, therefore, respondent had violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. Direct Taxes and, therefore, respondent had violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. Direct Taxes and, therefore, respondent had violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. Direct Taxes and, therefore, respondent had violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. Direct Taxes and, therefore, respondent had violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. Direct Taxes and, therefore, respondent had violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. Direct Taxes and, therefore, respondent had violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of
- Order of the Tribunal was set aside.

 17. In Dy. Inspector General of Police v. K.S. Swaminathan [(1996) 11 SCC 498] a charge memo imputing misconduct on the part of the respondent, an inspector of police, was issued to him. Tamil Nadu Administrative Tribunal on an application filed by the respondent set aside the charge memo on the ground that the charges were vague. On appeal to this application filed by the respondent set aside the charge memo on the ground that the charges sheet supplied are required Court, it was held that at the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of supplied to the delinquent officer would disclose the alleged misconduct. This Court observed that the Irribunal, therefore, was totally unjustified in going into the charges at that stage.
- Tribunal, therefore, was totally unjustified in going into the charges at that stage.

 18. In M.S. Bindra v. Union of India & Others [(1998) 7 SCC 310] the appellant was served with an order of compulsory retirement. His challenge to this order did not find favour with the Central Administrative Tribunal. On appeal to compulsory retirement. His challenge to this order did not find favour with the Central Administrative Tribunal. On appeal to compulsory retirement. His challenge to this order did not find favour with the Central Administrative Tribunal. On appeal to compulsory retirement is permissible if the this Court it was observed that judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is rather arbitrary or mala fide or if it is based on no evidence. Then this Court observed as under a contract of the court of

"While viewing this case from the next angle for judicial scrutiny, i.e., want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials, no reasonable man would reach such a conclusion. While evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "nemo firut repente turpissimus" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of unexceptional but still it is a salutary guideline to judge human c

19. In M/s. Hindustan Steel Ltd. v. The State Orissa [1978 (2) ELT (J 159) (S.C.) = AIR 1970 SC 253] the authorities under the Orissa Sales Tax Act, 1947 had imposed penalty on the appellant. One of the question before this Court was whether the Tribunal is right in holding that penalties under Section 12(5) of the Act had been rightly levied and whether in view of the serious dispute of the law it cannot be said that there was sufficient cause for not applying for registration. This Court then said as under:

"Under the Act penalty may be imposed for failure to register as a dealer: Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party

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obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

- 20. In the case of Madan Mohan Choudhary v. State of Bihar and Others [(1999) 3 SCC 396], this Court set aside the order of compulsory retirement of the appellant, a member of the Bihar Superior Judicial Service, on the ground that there was no material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest.
 - 21. We may note some more judgments.
- 22. In State of Madhya Pradesh v. Bharat Heavy Electericals [(1998) 99 ELT 33 (S.C.)] this Court examined the validity of Section 7(5) of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Praveah Par Kar Adhiniyam, 1976, which provides for levy of penalty. Earlier the Madhya Pradesh High Court in a writ petition had held the provisions of the Act were ultra vires and also violative of Articles 14 and 19 of the Constitution. Sub-section (5) of Section 7 of the Act relevant for our purpose is as under:
- "7. Registered dealers to issue bill etc. stating that goods sold are local goods. -
- (5) Where a registered dealer referred to in sub-section (1) or sub-section (2) has, in the course of his business, sold local goods to other registered dealers and has failed to make the statement referred to in sub-section (1) [...], it shall be presumed that he has facilitated the evasion of entry tax on the local goods so sold and accordingly he shall be liable to pay penalty equal to ten times the amount of entry tax payable on such goods as if they were not goods of local origin."
- 23. After considering the stand of the State Government that presumption raised in sub-section (5) of Section 7 was rebuttable and that the said provision did not provide for a fixed rate of penalty and that the assessing authority has discretion to impose reasonable amount of penalty, this Court held:

"From the aforesaid it follows that Section 7(5) has to be construed to mean that the presumption contained therein is rebuttable and secondly the penalty of ten times the amount of entry tax stipulated therein is only the maximum amount which could be levied and the assessing authority has the discretion to levy lesser amount, depending upon the facts and circumstances of each case. Construing Section 7(5) in this manner the decision of the High Court that Section 7(5) is ultra vires cannot be sustained.

24. It will be thus seen that once there was a case of imposition of penalty only the amount of penalty to be levied was left to the discretion of the assessing authority on the facts of the case.

25. In Government of Tamil Nadu v. K.N. Ramamurthy [1997 (7) SCC 101] it has been held that failure to exercise quasi-judicial power properly amounts to misconduct. In this case, the respondent working as Deputy Commercial Tax Officer was served with the following charges:

"(i) That he failed to analyse the facts involved in each and every case referred to abo

(ii) that he failed to check the accounts deeply and thoroughly while making final asses

(iii) that he failed to subject the above turnover to tax originally; and

(iv) that he failed to safeguard government revenue to a huge extent of Rs. 44,850.

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These charges were held proved against him and he was imposed with a punishment of stoppage of increment for three years with cumulative effect. Against the order of punishment, the respondent approached the Tamil Nadu Administrative Tribunal which set aside the disciplinary proceedings against the respondent. The Tribunal was of the view that the order of assessment passed by the respondent was in his quasi-judicial capacity and there were hierarchy of authorities under the General Sales Tax Act to correct his order if it was erroneous. Tribunal held the disciplinary proceedings initiated against the respondent are warranted and set aside the punishment imposed on him. In appeal by the Government of Tamil Nadu against the judgment of the Tribunal this Court referred to certain decisions in the cases of *Union of India* v. *Upendra Singh* [1994 (3) SCC 357]; *Union of India* v. A.N. Saxena [1992 (3) SCC 124]; and *Union of India* v. K.K. Dhawan [(1993) 2 SCC 56]. In the case of Upendra Singh, this Court had ruled that the Tribunal had no jurisdiction to go into the correctness of truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. This Court had also observed that the function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. A Tribunal or Court can interfere only if the charge (read with imputation or particulars of the charge, if any) no misconduct or other irregularity alleged can be said to have been made out or the charge framed is contrary to any law. This Court said that the finding accepted by the disciplinary authority was to the effect that by the act of negligence in making the assessment the delinquent caused loss to the Government exchequer to the extent Rs. 44,850/-. and that finding of the disciplinary authority was not open to challenge on the facts of the case.

27. In State of Punjab and Others v. Ram Singh Ex-Constable [1992 (4) SCC 54] this Court referred to the" definition of 'misconduct' as given in Black's Law Dictionary and Aiyar's Law Lexicon and said as under :-

"Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior, unlawful behavior, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs regard being had to the scope of the statute and the public purpose it seeks to serve."

28. Keeping in view the provisions of law and guidelines led by various judgments of this Court, we may now refer to the Article of Charge given to the appellant. It reads as under:

"Shri Z.B. Nagarkar while working as Collector, Central Excise, Nagpur (now redesignated as Commissioner of Central Excise) has passed an Order-in-Original No. 20/95, dated 20-3-1995 in which he had favoured M/s. Hari Vishnu Packaging Ltd., Nagpur by not imposing any penalty on the said party even though he had held that M/s. Hari Vishnu Packaging Ltd. had clandestinely manufactured and cleared the excisable goods and evaded the excise duty wilfully. Shri Nagarkar has thus failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. Servant and contravened Rule $\beta(1)(i)$ and (ii) and (iii) of the CCS (Conduct) Rules, 1964."

29. Statement of imputations of misconduct or misbehaviour in support of the article of charge briefly refers to the show cause notice issued to HVPL - the assessee - by the appellant and his Orders-in-Original as adjudicating authority under the Act. Reference has also been made to the explanation submitted by the appellant when he was asked to explain as to why he did not think it necessary to impose a penalty on HVPL - the assessee. In rejecting the explanation of the appellant, the statement of imputations of misconduct concludes:

"The judgments quoted by Shri Nagarkar do not appear to be relevant to the case of M/s. HVPL as these judgments refer to those cases where there are technical lapses/violations of the law; whereas in the instant case. Shri Nagarkar himself had reached the conclusion that M/s. HVPL had clandestinely cleared the goods with an intention to evade payment of duty. He had also held that M/s. Delite Plastics Industries had actively supported M/s. HVPL to evade the duty, it was based on the findings that he had ordered confiscation of the goods and confirmed the duty. Therefore, when the goods were confiscated and duty was confirmed, appropriate penalty should have been imposed by Shri Nagarkar on M/s. HVPL. The above action of Shri Nagarkar amounts to unjustified favour shown by him to M/s. HVPL."

30. Two principal issues arise for our consideration : (1) if levy of penalty under Rule 173Q was obligatory and (2) was 30. Two principal issues arise for our consideration: (1) if levy of penalty under Rule 1730 was obligatory and (2) was there enough background material for the Central Government to form a primal facile opinion to proceed against the officer on the charge of misconduct on his failure to levy penalty under Rule 1730. Appellant has contended that it is only now after the charge of misconduct on his failure to levy penalty under Rule 1730. Appellant has contended that it is only now after the charge of misconduct on his failure to levy penalty under Rule 1730.

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insertion of Section 11AC in the Act that levy of penalty has become mandatory and that it was not so under Rule 173Q. This contention does not appear to be correct. In both Rule 173Q and Section 11AC the language is somewhat similar. Under Rule 173Q "such goods shall be liable to confiscation" and the person concerned "shall be liable to penalty" not exceeding three times the value of excisable goods or five thousand rupees whichever is greater. Under Section 11AC the person, who is liable to pay iduly on the excisable goods as determined "shall also be liable to pay penalty equal to the duty so determined". What is the significance of the word "liable" used both in Rule 173Q and Section 11AC? Under Rule 173Q apart from confiscation of the goods the person concerned is liable to penalty. Under Section 11AC the word "also" has been used but that does not appear to be quite material in Interpreting the word "liable" and if liability to pay penalty has to be fixed by the adjudicating authority. The word "liable" in the Concise Oxford Dictionary means, "legally bound, subject to a tax or penalty, under an obligation". In Black's Law Dictionary (sixth edition), the word "liable" means, "bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution........... Obligated; accountable for or chargeable with. Condition of being bound to respond because a wrong has occurred. Condition out of which a legal liability might arise......... Justly or legally responsible or answerable".

- 31. When we examine Rule 173Q it does appear to us that apart from the offending goods which are liable to confiscation the person concerned with that shall be liable to penalty up to the amount specified in the Rule. It is difficult to accept the argument of the appellant that levy of penalty is discretionary. It is only the amount of penalty which is discretionary. Both things are necessary (1) goods are liable to confiscation and (2)) person concerned is liable to penalty. We may contrast the provisions of Rule 173Q and Section 11AC with Section 271 of the Income-Tax Act, 1961. This Section, prior to amendment in 1988, stood as under:
- "271. Failure to furnish returns, comply with notices, concealment of income, etc. (1) If the Income Tax Officer of the Appellate Assistant Commissioner or the Commissioner (Appeals) in the course of any proceedings under this Act is satisfied that any person -
- (a) has failed to furnish the return of total income which he was required to furnish under sub-section (1) of section 139 or by notice given under sub-section (2) of section 139 or section 148 or has failed to furnish it within the time allowed and in the manner required by sub-section (1), of section 139 or by such notice as the case may be, or
- (b) has without reasonable cause failed to comply with a notice under sub-section (1) of section 142 or sub-section (2) section 143 or fails to comply with a direction issued under sub-section. (2A) of section 142, or
- (c) has concealed the particulars of his income of deliberately furnished inaccurate particulars of such income.

he may direct that such person shall pay by way of penalty, -

- (i) in the cases referred to in clause (a), -
- (a) in the case of a person referred to in sub-section (4A) of section 139, where the total income in respect of which he is assessable as a representative assessee does not exceed the maximum amount which is not chargeable to income-tax, a sum not exceeding one per cent of the total income computed under this Act without giving effect to the provisions of sections 11 and 12 for each year or part thereof during which the default continued;
- (b) in any other case, in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent of the assessed tax for every month during which the default continued.

Explanation. - In this clause "assessed tax" means tax as reduced by the sum, if any, deducted at source under Chapter XVII-B or paid in advance under Chapter XVII-C.

(ii) in the cases referred to in clause (b), in addition to any tax payable by him, a sum which shall not be less than ten per cent but which shall not exceed fifty per cent of the amount of the tax, if any, which would have been avoided if the Income returned by such person had been accepted as, the collection of the lax.

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(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars, of such income: ..."

- 32. It would, thus, be seen that under provisions of Section 271 of the Income-Tax Act in the first instance there is a discretion with the assessing authority whether to impose any penalty or not and if the assessing authority finds that it is a case for imposition of penalty then it has no discretion in the matter and the certain amount of penalty depending on the facts and circumstances of each case has to be imposed subject to the maximum limit mentioned in the section.
- 33. Now when show cause notice was issued to the assessee he was also asked to show cause as to why penalty be not imposed upon him. The stand of the Union of India before us, as stated in the counter affidavit is: "It was observed that the petitioner in his capacity as adjudicating authority came to the conclusion that the party M/s. HVPL had clandestinely cleared the goods with an intention to evade the payment of duty, he also ordered for the confiscation of the goods and confirmed the duty. In these circumstances, he would have imposed appropriate penalty on the party. It was under these circumstances, that the impugned charge memo was issued." And further it appeared "that the discretion in this regard did not appear to have been exercised clearly and reasonably". It is not that non-levy of penalty by the appellant in his adjudication order was mere omission. Order is silent as to why he did not think it fit to impose any penalty on the assessee. In the case of the transporter who was also proceeded against the appellant did not impose any penalty as he said he (transporter) being the owner of a public vehicle. The transporter was merely cautioned "not to repeat such an act, as the same would be viewed seriously in future." The third noticee was also cautioned. Rather non-levy of penalty by the appellant on the assessee was intentional as he himself in his explanation dated November 18, 1996 said : (1) On going through the records of the case he was aware that there was no conclusive evidence against the assessee and the material evidence on record was not sufficient 'to sustain the charges levelled against the party. (2) He took a pro-revenue stance in this case although there was perhaps a case, at least an arguable one, in their favour and his conclusion regarding mens rea on the part of the assessee was also based purely on circumstantial evidence; and that it was a weak case for the department which he could uphold only on placing a little extra reliance on evidence on record. (3) It would have been unfair to impose penalty on the assessee since the penal provisions should be invoked only in cases where the adjudicator is fully convinced with the material and there is direct evidence substantiating the guilt of the notice and this view was fully supported by the judgments of the High Court, some High Courts and the Tribunal, (4) He had a nagging feeling that had he imposed any penalty on the assessee, they would have gone on appeal before the Appellant Tribunal and the department would have not only lost the case in terms of penal action but probably the confirmation of the duty demanded could have been jeopardized.
- 34. The question is: If such a stance by the appellant was to "favour" the assessee or the officer was rightly of the view that it was not a case of levy of penalty. It is a quasi-judicial order. Merely because penalty imposable has not been imposed, which was obligatory for the officer to impose, could it be said that if it is a case of misconduct and he is liable to be proceeded against? The officer did impose the excise duty and also ordered confiscation of the goods. What is the evidence proceeded against? The officer did impose the excise duty and also ordered confiscation of the goods. What is the evidence proceeded against? The officer did impose the excise duty and also ordered confiscation of the goods. What is the evidence proceeded against? The officer did impose the excise duty and also ordered confiscation of the goods. What is the evidence proceeded against? The officer? He was served with the memorandum dated September 2, 1997. It was accompanied with Annexure 1 (Article of charge) Annexure II (Statement of imputations of misconduct or misbehaviour IV (List of witnesses). Article of charge we have reproduced above. Statement of Imputations of misconduct or misbehaviour referred to the Order-in-Original passed by the officer and his explanation as to why he did not think it fit to impose penalty. List of documents mentions only three documents, namely, Order-in-Original, (2) order of the Board under Section 129 of the Act for filing appeal and (3) explanation dated November 18, 1996 of the officer. There is no witness mentioned in the list of witnesses. So the Order-in-Original, the explanation of the officer and the direction of the Board for filing appeal are the basis for the charge of misconduct or misbehaviour.
- 35. Penalty to be imposed has to be in commensurate with the gravity of the offence and the extent of the evasion. In the present case, penalty could have been justified. Appellant was, however, of the view that imposition of penalty was not mandatory. He could have formed such a view. Under Section 325 Indian Penal Code, a person found guilty "shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine". Section 63 IPC provides that where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive. A single Judge of the Patna High Court in *Tetar Gope v. Ganauri Gope* [AIR 1968 Patna 287] took the view that expression "shall also liable to fine" in Section 325 IPC does not mean that a sentence of fine must be imposed in every case of conviction in that section. He said:

"Such an expression has been used in the Penal Code only in connection with those offences where the legislature has provided that a sentence of imprisonment is compulsory. In regard to such offences, the legislature has left a discretion in the Court to impose also a sentence of fine in appropriate cases in addition to the imposition of a sentience of imprisonment which along is obligatory."

36. We do not think that the view expressed by the Patna High Court is correct as it would appear from the language of the section that sentences of both imprisonment and fine are imperative. It is the extent of fine which has been left to the discretion of the court. In Rajasthan Pharmaceuticals Laboratory, Bangalore & Others v. State of Kanataka [(1981)] SCC 645]

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this Court has taken the view that imprisonment and fine both are imperative when the expression "shall also be liable to fine" was used under Section 34 of the Drug and Cosmetics Act, 1940. In that case, this Court was considering Section 27 of the Drugs and Cosmetics Act, 1940, which enumerates the penalties for illegal manufacture, sale, etc., of drugs and is an

"Whoever himself or by any other person on his behalf manufacture for sale, sells slocks or exhibits for sale or distributes -Control Administrative Vitoung

- (a) any drug -
- (ii) without a valid licence as required under clause (c) of Section 18.2

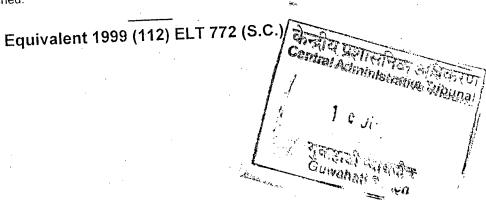
shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine:

Provided that the court may, for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year: ..."

- 37. This Court said that the High Court imposed a fine of two thousand rupees on each of the three appellants for the offence under Section 18(c) of the Act when Section 27(a)(ii) makes a sentence of imprisonment of not less than one year compulsory for such offence in addition to fine unless for special reasons a sentence of imprisonment for lesser period was warranted. It would, thus appear that this Court was of the opinion that in such a case the imprisonment and fine both are imperative.
- 38. When we talk of negligence in a quasi -judicial adjudication, it is not negligence perceived as carelessness inadvertence or omission but as culpable negligence. This is how this Court in State of Punjab & Ors. v. Ram Singh Ex-Constable [(1992) 4 SCC 54] interpreted 'misconduct' not coming within the purview of mere error in judgment, carelessness or negligence in performance of the duty. In the case of K.K. Dhawan [(1993) 2 SCC 56], the allegation was of conferring undue favour upon the assessees. It was not a case of negligence as such. In Upendra Singh's case [1994 (3) SCC 357], the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of K.S. Swaminathan [1996 (11) SCC 498], was not where the respondent was acting in any quasi-judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the Court to see whether they support the charge of the alleged misconduct. In M.S. Bindra's case [1998 (7) SCC 310] where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or *mala fide* or based on no evidence. Again in the case of *Madan Mohan Choudhary* [1999 (3) SCC [396], which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In *K.N.* Ramamurthy's case [1997 (7) SCC 101], it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd.'s case [1978 (2) ELT (J 159) (S.C.) = AIR 1970 SC 253], it was said that where proceedings, are quasi-judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be imposed merely because it is lawful so to do. In the present case, it is not that the appellant did not impose penalty because of any negligence on his part but he said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that Patna High Court while interpreting Section 325 IPC held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.
- 39. When penalty is not levied, the assessee certainly benefits. But, it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.
- 40. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant.

There is no other instance to show that in similar case the appellant invariably imposed penalty.

- 41. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of
- 42. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary disciplinary proceedings. proceedings against the appellant. Charge of misconduct against him was not proper. It has to be quashed.
 - 43. Before concluding, there are two aspects of the matter which we wish to point out. These are :
- 1. In the counter affidavit filed by the Union of India, it has been said that the special leave petition filed by the appellant "is totally misconceived, premature and highly irresponsible". In the whole body of counter affidavit strong language has been used. Union of India is not a private litigant. Such language in the pleading should be avoided. One can be firm without being impolite.
- 2. There is a charge of misconduct against the Collector (now Commissioner) of Central Excise. While disciplinary proceedings are pending against him, he is transferred to the National Academy of Custom. Excise and Narcotics to guide the probationers. It is certainly a paradoxical situation that a man who is not fit to hold the post of Collector is fit enough to impart training to the probationers entering the service. Best talent should be sent to the academy to teach the probationers. Posting to the academy should be considered as an honour and not punishment. Our comment is no reflection on the appellant herein as we have set aside the initiation of disciplinary proceedings against him.
- 44. With these observations, the appeal is allowed with costs. The Order of the Central Administrative Tribunal dated August 12, 1998 and the impugned judgment dated September 7, 1998 of the High Court are set aside. Article of Charge issued against the appellant is quashed.



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Annexure-Go

CENTRAL EXCISE COMMISSIONERATE :: DIBRUGARH

Lane F, West Milan Nagar, Dibrugarh-786003, Assam

Ph.: 0373-2314082,Fax: 0373-2315257, E-mail: commdbr@sancharnet.in

C.No.II(8)22/VIG/COMMR/DIB/2005/6

Date: 02/04/2007

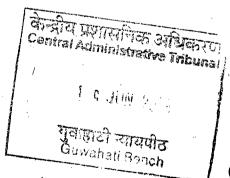
To,
Shri H.R. Saha,
Assistant Commissioner,
Central Excise,
Tinsukia- 786 125.

Sub: Investigation of CBI Case No.PE-04(A)/2006-GWH.

A communication has been received from Shri Rohit Kumar, S.I., CBI ACB, Guwahati that your presence is required at the Office of the Superintendent of Police, Central Bureau of Investigation, Dipannita Complex, Near Down Town Hospital, G.S. Road, Dispur- 781 006, on 5th April 2007 at 10.00 Hrs. for the purpose of answering certain queries relating to the case noted above.

You are therefore ,requested to attend the Office of the Superintendent of Police, Central Bureau of Investigation, Dipannita Complex, Near Down Town Hospital, G.S. Road, Dispur-781 006, on 5th April 2007 at 10.00 Hrs. without fail.

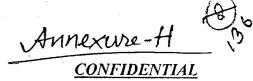
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Ma 02.04.07

(Nagesh Pathak)
Joint Commissioner

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CENTRAL EXCISE COMMISSIONERATE :: DIBRUGARH

Lane F, West Milan Nagar, Dibrugarh-786003, Assam

Ph.: 0373-2314082,Fax: 0373-2315257, E-mail: commdbr@sancharnet.in

C.No. II(8)22/VIG/COMMR/DIB/05/9261

Date: 04/05/2007

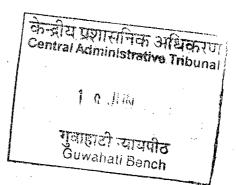
To,
Shri H.R.Saha,
Assistant Commissioner,
Central Excise,
Tinsukia Division,
Tinsukia- 786 125

Sub: Investigation of CBI Case No. PE- 04(A)2006- GWH.

A communication has been received from Shri Rohit Kumar, S.I. C.B.I., ACB, Guwahati that your presence is required at the Office of the Commissioner of Central Excise, Dibrugarh, Lane – F, Milan Nagar, Dibrugarh, Assam on 07/05/2007 & 08/05/2007 at 10.00 hrs. for the purpose of answering certain queries to the Officerof the C.B.I. relating to the case noted above.

You are, therefore, requested to attend the Office of the Commissioner of Central Excise, Dibrugarh, Lane – F, Milan Nagar, Dibrugarh, Assam on 07/05/2007 & 08/05/2007 at 10.00 hrs. without fail.

Attendande Adurali



(Nagesh Pathak)
Joint Commissioner

0

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.57 of 2007

Date of Order: This the 12th Day of March, 2007.

HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Asstt. Commissioner,
Gentral Excise and Service Tax
Ranga Ghora Road (Durga Bari),
P.O. & Dist: Tinsukia,
Pin: 786125

By Advocate Mr. S.Sarma, Ms. B. Devi, Mr. H. K. Das. ,

Applicants

किन्द्रीय प्रशासनिक अधिकारण Central Administrativo Inbunal

-Versus-

Union of India represented by Secretary Revenue to the Govt. of India, Ministry of Finance, New Delhi-110001.

- 2. The Chief Commissioner Customs and Central Excise N.E.Region, Shillong, M.G.Road, Meghalaya.
- The commissioner of Central Excise
 Dibrugarh, Milan Nagar, C. R. Building
 Dibrugarh-786003. Respondents

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

ORDER (ORAL)

SĂCHIDANANDAN, V.C:

Commissioner, Central Excise and Service Tax at Tinsukia. The applicant vide his application dated 31.1.05 applied for earned deave w.e.f. 02.03.05 to 25.3.05. Thereafter the applicant submitted a prevised leave application praying for grant of earned leave from 1.3.05 to 24.3.05 on medical ground. During his such heave period he received a communication dated 11.3.05 issued by the Addl.

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Commissioner (P&V) Dibrugarh directing him to respond duly

applicant immediately submitted a representation dated 16.3.05

(Annexure- E) requesting the authority to sanction his leave. The applicant subsequently received a communication dated 30.3.05 issued by the joint Commissioner. Central Excise indicating that his revised leave application dated 28.2.05 has not been sanctioned and

the applicant has failed to comply with the office order dated 28.2.05.

The applicant again submitted an application dated 31.3.05 indicating the necessity. But the respondents did not regularise the period of leave of the applicant nor he was paid salary for that period. The applicant requesting payment of his salary for the month of March 2005 made several representations to the concerned authority but he failed to get any positive reply: from the respondents. But the respondents by letter dated 28.7.05(Annexure-M) informed the applicant that the matter is under consideration by the competent authority and it will be communicated to him in due course of time. The operative portion of the letter dated 28.7.2005 is quoted below:

"The matter is under consideration by the authority and as soon as it is decided. You will be informed."

JANA

effi Being aggrieved the applicant has filed this O.A seeking

be "Tollowing reliefs: -

8.1. To direct the respondents to regularise the period of services of the applicant and to pay him the salary for the said period.

the

8.2. To direct the respondents to release the TA bills for the period 01.08.03 to 16.11.03 and 16.12.04 to 24.12.04, along with an interest @ 21 % pa."

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We have heard Mr.S.Sarma learned counsel for the Mr.M.U.Ahmed learned Addl. C.G.S.C. · applicant and respondents. When the matter came up for hearing the learned counsel for the applicant has submitted that he will be satisfied if a direction is given to the applicant to make a comprehensive representation before the 3rd Respondent narrating all his grievances and the 3rd respondent may be directed to dispose of the same within a time frame. The counsel for the respondents has submitted that he has no objection if such direction is given. In the interest of justice this Court directs the applicant to make a comprehensive representation within two weeks from to-day with relevant document before the 3rd respondent and on receipt of such representation the 3rd respondent or any other competent authority shall dispose of the with a speaking order within a time frame of two months thereafter.

The O.A. is disposed of accordingly. There will be no order

as to costs

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SE/VICE GIVINIVA SH/MEMBER (A)

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Annexure-5

DEFICE OF THE ASSISTANT COMMISSIONER,

CEMTRAL EXCISE & SERVICE TAX::: TINSUKIA DIVISION

C.No. II(29)04/PL/ET/CON/05/Pt-II/ 1998

Dated, 20/08/2007.

Fo

The Commissioner.

Central Excise & Service Commissionerate,

Dibrugarh.

Sir.

Sub_: Request for drawal of my pay for the month of March 2005 as per Honorable C.A.T. Guwahati. Orders vide O.A No. 57/2007 & M.P No 65/07 dated 18/07/2007.

Kindly refer to my letter even no. 11807 dated 26/03/2007 & verbal discussion & request to you in different times in the matter. As per Departmental Misc. petition filed before the Hon'ble C.A.T, Guwahati for implementing the order vide O.A No 57/2007 dt. 12/03/2007 & the order of the Hon'ble C.A.T, has already passed one month.

In view of the above, I request you kindly to order for drawal of pay for 1st march to 24 th March 2005 of self.

Hope you will take necessary early action in the matter.

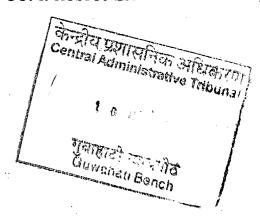
Thanking you,

Enclo: I (one) sheet.

Yours faithfully,

(H.R.SAHA)
ASSISTANT COMMISSIONER

provide advocate



ENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH:

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 Original Application I Mise Petition No. 	C5 //	37 11. DA 57/07
A ALAMAN .	10	
3. Contempt Petition No.	The second second	
4. Review Applicantion N	0.	
Applecant(S)		WS Union of India & Ors
Whbraceure (2)		Himanshu Ranjan Saha ushya, &r. casc.
Advocate for the Applica	nts:- G.B.	ishya, Er. Cask.
Advocate for the Respond	lants: - /s. S	arma, B. Devi H.K.Das
W. deduction	~	; ;
Notes of the Registry	Date	Order of the Tribunal
	18.7.2007	This Misc Petition has been filed
		braying for one month extension in
		implementing the order passed in
		D.A.57/2007.
		Heard Mr.G.Baishya, learned
		r.C.G.S.C. for the Misc. Petitioners and
ministrative		Mr.H.K.Das, learned counsel for the
P. M. Marie		åpposite party.
To July and the same of the sa		Considering the averment and the
(3 mm = 1	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	argument advanced by the counsel for
	↓ *** *** *** *** ** ** ** ** *	the Misc. Petitioner I am of the view that
GUWAHA	1	extension of one month time will suffice to
		comply with the orders of this Tribunal.
TRUE COPY		Therefore, one month extension is
	å i i i i i i i i i i i i i i i i i i i	granted for implementation of the orders
असभाग अधिकारी	A Regulation and	of this Tribunal.
Section Office (Jud)	Ì	The M.P. is allowed accordingly.
भुद्राहरी क्राव्याह	A CONTRACTOR OF STREET	Hours and the Control of the Control
Mr Wadney and A City		Say, VICE CHAIRMAN

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मुदाहाटी न्यायपीठ याद्यास्त्री स्थापीठ पाद्यास्त्री स्थापीठ

Gueral Bench

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Annexure-K U2GENT (H)

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OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE DIVISION: DIBRUGARH

·C.NO.V(18)09/REF/ACD/2004/ 2257

Dated: 29.06.05.

To

The Commissioner, Central Excise, DIBRUGARH,

subject :- Refund claim of Rs.1.10.61.418/- in respect of M/s Chabwa Tea Estate, pre-audit -regarding.

Madam,

Kindly refer to your office letter C.No.V(14) 19/Pre-Audit/DIB/2005/193 dated 27.06.05 on the above subject.

I have gone through the case records of the case of (161) ALT 145(50) 2005. The case is related to 100% EOU-Exemption to goods for use in Eou to avail exemption under Notification No.123/81 dated 02.05.81(as amended).

This case is under Notification No.33/99 CE which is a special exemption for the North East Region. The units have to fulfill the condition and then become edigible. Question of export under 100% EOU appears to be not here. This office has decided their eligibility by scrutining the details records, Range Officer's report, site verification etc. after details of evolution and installation of machinery was found effective in increase in installed capacity by 25% on or after 24,12,97 as per Notification No.33/99 CE dt.8.7.99. Also the evolution of Notification No. ... / Report was scrutinised. Bearing Transport T registered Engineer's report was scrutinised. Besides gave consequential relief on the ground that there is no ban in late submission of such claim. Only condition is the unit should be eligible and it ishould be determined by the proper authority. All the cases have been exempted by the Commissioner, Central Excise, Dibrugarh.

In the cases of Dulklengia, Borholla T.E., Suntok T.E. in OIA No.4/CE(A)CHY/05 dated 25.01.2005 appears to be more identical to this case which has also been accepted by the Department.

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Moreover in a number of higher appellate forum and CESTAT, such late submission case have been settled and accepted by the Department.

As such it appears that the case of Ginni Filaments Ltd. vs Commissioner, Central Excise is not similar to this instant case. As the Notification No.33/99 CE exemption is eligible Ancrease in installed capacity by 25% and the cited case is EOU exemption.

The eligibility in terms of Notfn.No.33/99 CE has already determined first and as a result this refund arises. The unit is neither a 100% EOU nor it export directly from their unit. Therefore in my opinion these case: appears to be not similar.

The eligibility was determined by this end on the basis of records and as per Notfn.No.33/99 CE and other guidelines issued by the Board from time to time. The Board has clarified that Divisional Asstt.Commissioner/Dy.Commissioner is the proper sanctioning authority. On the basis of the docume is the eligibility has been determined keeping in view of the above facts. In this respect, Chief Commissioner, Customs & Central Excise, Shillong's letter C.No. IV(16)35/CCO/SH/2003/32297-98 dated 29.10.04 may please be referred. All the documents/papers on the basis of which the eligibility was determined have been forwarded to Audit to check for phe audit.

The refund arises :: after the eligibility was found in the favour of the unit. The refund claim file of the said assessee was forwarded for pre-audit to check the PLA, TR-6 debits etc. and its correctness or otherwise.

Now this office has received back the file from your end. This office has determined the eligibility and refund has to be considered as a result of that eligibility order and being the sanctioning authority I have to sanction their claim provisionally or otherwise. The unit found eligible for refund in terms of Notfn.No.33/99 CE. This office is receiving regular reminder from the unit to clear their refund otherwise interest have to be paid as per their claim dt. 28.6.05 ... 29.6.05 (copy enclosed). Under the above circumstances I may be guided as to whether

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Superintendent (ViG.)

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party's claim for refund should be processed for sanction or otherwise as the eligibility order since issued after proper verification.

An early reply is highly solicited.

Enclo : Live sheet.

Your & faithfully.

(H.R. SAHA)
Assistant Commissioner,
Central Excise Division,

DIBRUGARH

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Superintendent (VIO.). Olbrugarh.

केन्द्रीय प्रशासनिक अधिक Central Administrative Inbunal

THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE

East Regional Bench: Kolkata

CENTRAL EXCISE APPEAL NO. : EDM-381/05

Arising out of Order-in-Appeal No. 13/CE(A)/GHY/2005 dated-23/02/2005 Passed by the Commissioner of Central Excise(Appeals) Guwahati.

For approval and signature:

Mrs, Archana Wadhwa, Hon'ble Member (Judicial) She, S. S. Sckhon, Hon'ble Member (Technical)

- 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
- 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? All of Mengla (PH 201 and)
- 3. Whether his Lordship wish to see the fair copy of the Order?
- 4. Whether Order is to be circulated to the Departmental Authorities?

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Applicant(s)/Appellant (s)

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autes da cabar Ruto a M/s. Napuk Tea Estateules 1985 for

M/s. Muttrapore Tea Estate

Respondent (s)

Dr. Samir Chakraborty, Sr. Advocate for the Applicant(s)/Appellant(s)

Sri P.K. Das, JDR for the Respondent

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CORAM

Mrs. Archana Wadhwa, Hon'ble Member (Judicial) Shri S.S. Sekhon, Hon'ble Member (Technical)

Date of hearing/decision: 4/07/2006

Per: Shri S.S. Sekhon,

This matter was heard pursuant to an order of the Hon'ble High

Court of Kolkata in WP No. 575/06 dated April 28, 2006. The appellant is

Commissioner of Central Excise Dibrugarh and the respondents are an

assessee of a Tea factory manufacturing tea. The Ld. Commissioner

(Appeal) while interpreting the provisions of Section 11B dated (Central Marie) (Appeal) while interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the provisions of Section 11B date of the interpreting the interpr

of refund in the facts of the cases. The Revenue is in appeal against this

order on the ground that the petition awas filed by the Revenue

grounds:

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Commissioner (Appeals) relies on CBEC Circular F. No. 354/B/90-TRU (part-II) dated -6/10/99 to a given conclusion that the provisions of Section 11 AB is not applicable to claims under Notification No. 33/99-CF

It is settled law that in excise where a particular statute does not give limitation, prescribed under the general law i.e. Limitation Act 1932 (36) of 1933 shall be applicable and the present claim would, therefore, be barred.

The Notification 33-99 stipulates that claims of refunds of particular month must be dealt before 7th of the subsequent month is settled law that the condition of notification has to be constituted strictly and in this case the applications have not been filed as prescribed and have been filed nearly four years thereafter.

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(iii) It is supposed the great of the sings not promined on the ist published a frame (a. and the fires our count would

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We have heard both sides and considered the material on record 2)

CBEC on the subject. We also find that the order of the Ld. Commissioner

and find that the grounds taken by Revenue do not meet the instructions of

(Appeals) is balanced and has correctly appreciated the fact that no formal

application for refund under Section 11AB was required to be filed and the

refunds were to be determined by the Ld. Assistant Commissioner of Central

Excise passed on the monthly returns filed which is the stipulations of the

notification. For further material if the Assistant Collector so required.

would have been sought from the applicants.

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We find that the Assistant Collector in having availed the ands taken by Alexenge go no land

benefit of notification cannot deny the applicants of their due claims. We

We also find that the order

find no merits in the grounds taken by Revenue and reject the

and has particuly appropriate the

confirming the order of Commissioner (Appeals). /ippli: .tion

Appeal rejected.

e mined by the Lide Assistant

Dictated and pronounced in the open court.

a country returns filed which

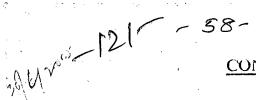
(Archana Wadhwa) Member (Judicial)

Member (Technical)

S.S. Sekhon)

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

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Central Administrative Inbun.

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

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E-mail: - ccshillo@exclse.nic.in EDECS: - (zone18)

C.No.IV(16)35/CCQ/SH/2003/ 22297-98

Dated: 29th October 2004 CIVY

Τo

The Commissioner Central Excise Shillong/Dibrugarh.

Subject: North East Exemption Notifications relating to goods manufactured in Specified Areas - Sanction of refund regarding.

Please refer to the Notification No. 32/99-CE and 33/99-CE of even dated 08.07/99 (as amended) allowing exemption to specified goods manufactured by Units located in Specified areas of North-Eastern States equal to duty of Excise and Additional duty of Excise paid in each on the above subject.

Para 2 of the both Notifications envisages inter-alia -

"The exemption contained in this Notification shall be given effect to in the following manner, namely:-

- (a) The manufacturer shall submit a statement of the duty paid from the said account current to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid other than the amount of duty paid by utilization of CENYAT Credit under the CENYAT Credit Rules 2001.
- (b) The Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be after such verification, as may be deemed necessary, shall refund the amount of duty paid by utilization of NVAT Credit under the CENVAT Credit Rules, 2001, during the month under consideration to the manufacturer by the 15th of the next month.

Provided that in cases, where the exemption contained in this notification is not applicable to some of the goods produced by a manufacturer such refund shall not exceed the amount of duty paid less the amount of the CENVAT Credit availed of, in respect of the duty paid on the inputs used in or intrelation to the manufacture of a goods cleared under this Notification.

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(c) If there is likely to be any delay in the verification, the Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, shall refund the amount on provisional basis by the 15th of the next month to the month under consideration, and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refunds admissible to the manufacturer."

Brom the above it would be observed that the assessec(s) availing the benefit of these 2(two) Notifications should submit a statement of the duty paid from the said Account Current (i.e. PLA) to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which duty has been paid other than the amount of duty paid by utilization of Cirvat Credit under CENVAT Credit Rules, 2001 and the Assistant Commissioner/Deputy Commissioner after proper verification, shall refund the amount of duty paid other than the amount of duty paid by utilization of CENVAT Credit during the month under consideration to the manufacturer by the 15th of the next month and if there is any delay in verification, the Assistant Commissioner or Deputy Commissioner shall refund the amount on provisional basis by the 15th of the next month to the month under consideration with necessary adjustment in the subsequent months.

Instances have, however, come to light where proper checks/verifications have not been exercised by the Supervisory officers leading to loss of revenue by way of fraudulent refunds.

You are, therefore, directed to issue suitable instruction to all the Divisional Officers to be very meticulous while considering the exemption benefit by way of refund and that there should not be any laxity in making verification of the claims/statement/records, which may entail loss of revenue to the Government. It is the responsibility of the concerned Assistant Commissioner/Deputy Commissioner to be very careful and ensure no irregular and unintended benefit takes place enusing damage/loss to the Revenue. Any laxity/lapses will be viewed very seriously.

ATTESTED

Superintendent (VIG Contral Excise, Dibruyarh. (J.S.R. KHATHING) CHIEF COMMISSIONER

Central Administrative Tribunal

123 - 60-

AUMEXURE - N Circular No.772/5/2004-CX S

F.No.354/122/2002-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

New Delhi, dated the 21st January, 2004.

To

Westly Barry

The Chief Commissioner of Central Excise, Guwahati, Chandigarh, Meerut The Commissioner of Central Excise, Shillong, Dibrugarh, Chandigarh-II, Meerut

Madam/Sir,

(b)

Subject: Clarifications on the term "Substantial Expansion" in the area based exemptions - regarding

Area based exemptions from central excise duty are currently available under various notifications as follows:

(a) for North Eastern States under notification No. 32/99-CE and 33/99-CE both dated 8.7.1999:

for Jammu & Kashmir under notification No. 56/2002-CE and 57/2002-

CE both dated 14.11.2002; and

for Himachal Pradesh and Uttranchal under notification No. 49/2003-CE and 50/2003-CE both dated 10.6.2003.

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2. The exemption contained in these notifications is applicable either to the new industrial units or units undertaking substantial expansion by way of increase in installed capacity by not less than 25%.

Board has received representations from various quarters seeking clarifications on the term "substantial expansion". With a view to ensure smooth implementation of the exemption schemes, following guidelines are circulated to explain the scope of "substantial expansion" so far as it relates to the applicability of above-mentioned notifications:

Increase in installed capacity of an existing unit by not less than 25% should be the result of installation of additional plant and machinery. Any increase in the installed capacity by means other than installation of additional plant and machinery would not qualify for the benefit of exemption under "substantial expansion".

Attested to

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- (b) As substantial expansion is defined in terms of increase in installed capacity by 25% or more, value of investment in plant and machinery is not the criteria to define substantial expansion. So long as additional installation of plant and machinery results into increase in installed capacity by not less than 25%, quantum or value of investment in plant and machinery is not very material in deciding the criteria of substantial expansion.
- (c) There is no bar on use of second hand machinery for undertaking substantial expansion so long as it enhances the existing installed capacity by not less than 25%. What is relevant is the increase in installed capacity by not less than 25% by way of additional installation of plant and machinery.
- (d) The term substantial expansion is not defined in terms of original or depreciated value of plant and machinery. The only criterion to be satisfied is accretion in installed capacity by atleast 25% with additional plant and inachinery.__
- (e) Additional investment in plant and machinery for modernization or for improving the quality of existing products, unless it leads to increase in installed capacity by 25% or more, would not tantamount to substantial expansion.
- You are requested to keep the above guidelines in view while deciding the applicability of the term "substantial expansion" in the context of area-based exemption notifications. Any difficulty in implementation may please be brought to the notice of the Board.

(Gautam Ray) Joint Secretary (TRU)

Tel: 23092687

OFFICE OF THE COMMISSIONER CENTRAL EXCISE

CNU V(2) 1/TECH/DIB/03/1098

Copy forecoverled for information and necessar action to the Deputy / Assistant Commissioner, Costre Excise. Dibrigal Birision.

Central Administrative Tribunal (B. G. MAN DAL Superintendent (Hors. Tech Central Excise, Dibrugarh.

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GOVERNMENT OF INDIA MINISTRY OF FINANCE: DEPARTMENT OF REVENUE

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

C. No. II (9)2/CONF/ACT/06/ 10106

Dated: - 15/11/2006

To,

THE PRESIDENT OF INDIA, NEW DELHI

(THROUGH PROPER CHANNEL)

Kind attention:Sri S.P. Roy, Under Secretary to the Govt. of India,
AD-V, Ministry of Finance, Department of Revenue,
Jeevandeep Building, Parliament Street,

New Delhi-1.

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

Most Respectfully-Sheweth,

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

- 2. Respected Sir, I beg to be apologized for requesting to grant me an extension of time vide petitioner's letter C. No. II (9) 2/CONF/ACT/06/8521 dated. 19.10.2006 (Copy enclosed for kind ready reference) for replying to the memorandum.
- 3. The petitioner begs to submit the following reply in defence in terms of Para-2 of the memorandum.
- 3.1 The petitioner straightway denies all the articles of charges referred in Annexure-I, II. The charges are unethical, arbitrary, vindictive and bad in law.
- 3.2. The instant sanction & order for refund of Rs. 77, 52, 409.00 (Rupees seventy seven Lacs fifty two thousand four hundred and nine) only was passed consequent to eligibility order passed on 10/05/05 under Notification No. 33/99-CE dt. 08/07/99 as amended, as the assessee was found eligible for the benefit of exemption enshrined in the notification. The eligibility Order No. DIV/REF/ACD/01/05-06 dated 10/5/05 had been duly endorsed to the Commissioner of Central Excise, Dibrugarh for information and necessary action vide C. No. V (18)09/REF/ACD/2004/1777-80 dated 11/05/05 (Copy enclosed for kind information). (ANNEXURE-"A")
- 4. Subsequently, by virtue of the aforesaid Eligibility Order, draft sanction order of refund amount of Rs. I, 10, 61, 418.00 (Rupees one Crore ten lacs sixty one thousand four hundred and eighteen) only was forwarded to the Commissioner of Central Excise, Dibrugarh for Pre-audit before finally sanctioning amount of refund to the assessees vide C. No. V(18)09/REF/ACD/2004/1834 dated 16/05/05 with relevant claim file No.V(18)26/REF/ACD/2004-05 in original containing pages 2 to 520 and NSP I to III along with draft sanction Order. (Copy enclosed) (ANNEXURE-"B") with reference to which the

Central Administration 370 in Security

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petitioner was informed vide C. No. V (14) 19/Pre-audit/D1B/2005/193 dated 27/06/05 that the Commissioner of Central Excise. Dibrugarh was pleased to withhold pre-audit clearance of the above claim on the ground of time limit. It is stated in the said letter C. No. V (14) 19/Pre-audit/D1B/2005/193 dated 27/06/05 that the ratio of the judgment of the Supreme Court reported at 2005 (181) ELT-145 in the case of M/s. Gini Filaments is squarely applicable to this facts of this refund claim. It is also informed that the Supreme Court in the case of M/s. Gini Filaments has held that "Exemption Notification has to be read strictly so far as eligibility is concerned".

- 4.1 Petitioner in reply to this above said letter wrote back to the Commissioner of Central Excise, Dibrugarh explaining that the instant case of refund claim is not barred by limitation and also the case laws referred to above is also not applicable and relevant inasmuch as the eligibility order has since been issued on 10/05/05 making the assessee eligible to lodge their claim. (Copy of letter C.No V (18)09/REF/ACD/2004/2257 dated 29/06/05 is enclosed for ready reference). (ANNEXURE-"C") It is also informed to the Commissioner that the office of the petitioner is receiving regular reminder from the assessee for clearing their refund otherwise interest has to be paid. One of such reminders of the assessee dated 28.06.2005 is enclosed herewith for kind perusal. (ANNEXURE-"D")
- 4.2. On receipt of the letter from the petitioner, the Joint Commissioner of Central Excise, Dibrugarh of Commissionerate office, Central Excise, Dibrugarh vide his letter C. No. V (14)19/Pre-Audit/DIB/2005/8670 dated 25/07/05 in the last but concluding para observed thus: "You are required to pass an order on merits, keeping in view of aforesaid position of Law. Please ensure that the principle of Natural Justice is not violated" (Copy enclosed). (ANNEXURE-"E") In the same letter in para 2, it is said thus: "In the case of M/s. Shivdham Industries reported at 2002 (141) ELT/272, the Tribunal, while observing that an exemption under the Notification No 33/99-CE dt.08/07/1999 is not automatically defeated if the refund is not filled within the period of 7 (seven) days, also observed that the claim of refund in any case has been filled within the period prescribed under Section 11B".
- 5. In the said letter of the Joint Commissioner dated 25.07.2005; the petitioner has been directed to pass an order on merit. In this context, the petitioner begs to submit that the unit was rendered eligible for the benefit under notification No.33/99 vide eligibility order dated 10.05.2005 & the only alternative which was left before the petitioner is to sanction refund in the wake of passing the eligibility order. All the facts were made known by the petitioner to the Commissioner, but the Commissioner without resorting to the provisions of Section 35E of CEA 1944 returned the file to the petitioner. Therefore, the petitioner begs to submit that the refund has been sanctioned after adjudging the limitation aspect. It is a settled law that there is nothing in the notification to suggest that filing of claim not in time does not bar the claimant to get substantive benefit. In this connection, the judgment of the Hon'ble Tribunal in the case of Vinay Cement Ltd. reported in 2002(147) ELT 724 (Tri.- Kolkata) may kindly be perused (Copy enclosed).(ANNEXURE-"F")
- 6. The petitioner further begs to submit that the eligibility order passed by the petitioner, after observing the principles of natural justice has not been challenged and therefore, it has been presumed that the refund is not hit by bar of limitation. Also the petitioner was not directed by the Commissioner to file appeal as per the provisions of Section 35E of CEA 1944 though all facts were brought to the knowledge of the Commissioner of Central Excise, Dibrugarh as are evident from the correspondences received from the Commissionerate Office, Dibrugarh. Further, the petitioner begs to submit that in order to avoid payment of interest to the assessee in the event the assessee approach High Court, the petitioner settled the refund claim as the High Court has jurisdiction to award interest even though the refund does not fall under the purview of Section 11B of CEA 1944. The petitioner begs to state that the refund was released after obtaining proper undertaking from the assessee. (ANNEXURE-"G")
- 7. That Sir, from the above submission it is in evidence that the petitioner being a Quasi-judicial authority has acted in good faith and made required correspondences to the Commissioner of Central Excise, Dibrugarh for obtaining time to time direction/order. And that nowhere the

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

- 8. The petitioner begs to enclose a copy of Notification No. 33/99-CE dated 08/07/99 as amended which would show that there is no bar of sanction of any amount exceeding Rs. 5 (five) Lacs by officer of the level of the petitioner. In other hands, the Notification authorizes to sanction any amount of Refund Claim found eligible. (ANNEXURE-"H")
- 9. The petitioner also begs to refer to a case law in the matter of CCE, Dibrugarh. Vs. M/s. Napuk T.E. & M/s. Muttrapore T. E. wherein the Hon'ble CESTAT, Eastern Zone, Kolkata vide Order No. A-593/KOL/2006 dated 04/07/06 observed that the Assistant Commissioner cannot deny the applicants of their due claims and rejected the grounds of revenue. The Commissioner, Central Excise, Dibrugarh also accepted the said CESTAT's order with a direction to the petitioner to dispose similar cases as per the decision of the Hon'ble Tribunal (Copy enclosed CESTAT order dated 04/07/06 & Commissioner letter dated 22/09/06 for ready reference). (ANNEXURE-"I" & "J") It is pertinent to submit at this juncture that the Joint Commissioner of Central Excise, Dibrugarh vide his letter dated 25.07.2005 (supra) has projected the similar grounds to be considered at the time of passing order and the petitioner after careful examination of position of law and on the basis of the eligibility order passed refund sanction order (as aforesaid) and also without receiving any communication from the Commissioner of Central Excise, Dibrugarh about whether or not Review Application was being filed as per Section 35E of CEA 1944.
- 10. Under the aforesaid circumstances, the petitioner sanctioned the refund after observing necessary audit formalities and after examining the position of law as the assessee cannot be denied of their due claims.
- 11. The petitioner begs to submit that there are nothing on record that the petitioner acted as unbecoming of a Government Servant rather the petitioner acted in bonafide maintaining absolute integrity and devotion to duties by making all facts known to the Commissioner of Central Excise, Dibrugarh & the Commissioner of Central Excise, Dibrugarh has not given the true & proper guideline as per the provisions of law where there are provisions in law for review of an order passed by the officer sub-ordinate to the Commissioner.
- 12. The petitioner also begs to request that he may be afforded the opportunity to be heard in person and an independent enquiry instituted.

PRAYER.

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

Enclo: 26 Sheets.

I beg to remain Sir, Yours faithfully,

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

TINSUKIA

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE: DEPARTMENT OF REVENUE

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

C. NO. 11(9)3/CONF/ACT/06/ 10519

Dated:-08/12/2006

To, SRI S. P. ROY, Under Secretary to the Govt. of India, C.B.E.C., Ministry of Finance, Department of Revenue, Govt. of India, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

(THROUGH PROPER CHANNEL)

Sub:-Memorandum No. 62/2006 of dated 24/11/2006

Sir,

In acknowledging receipt of your letter F. No. C. 14011/24/2006-Ad.V 5830 of dated. 24/11/2006 received on 30/11/2006.

Relied upon documents stated to have been enclosed with Annexure III was not received by me for which I can't submit the defense submission.

Thanking You,

केन्द्रीय प्रशासनिक आर्ट्स Centra edministrativa Tripuna

Yours faithfully,

(H.R. SAHĂ)

ASSISTANT COMMISSIONER CENTRAL EXCISE & SERVICE TAX. TINSUKIA DIVISION

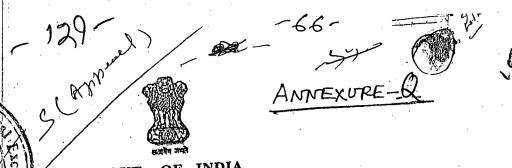
Regd.A/D.

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

(H.R.SAHA) ASSISTANT COMMISSIONER

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OF INDIA GOVT. OFFICE OF THE COMMISSIONER USTOMS ANDCENTRAL EXCISE (APPEALS) UDYOG VIKASH BHAWAN Sth FLOOR),BHANGAGARH :: GUWAHATI- 781005

(9)2/XAP-37/RA/DB/2005/

Date 31.1.06 ORDER-MAPPEAUNO.10/CE(A)/GHY/06/ Passed by. Sr. A. K. PAWAR Commissioner, Customs and Central Excise (Appeals),

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

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

A revision application under Sec. 35 EE of the Central Excise Act, 1944 shall lie to the Control Govi. and may be addressed to the under Secretary , Revision Application Unit, of India, Ministry of Finance, Deptt. of Revenue, 4th floor, Jeevan Deep Building, Sansad Warg, New Delhi-110001 in respect of an order passed by the Commissioner (Appeals) Central Excise Act. 1944 where such orders are of the nature referred to in the first provision to Sub-Section (1)of Sec. 35B of the Central Excises Act, 1944. These states to cases of goods lost in transit or during processing, rebate of duty of excise goods contacture of goods exported or

mported outside of India (except to Nepal and Bhutan) without payment of duty. In terms of Sub-Section (3) of Sec.35EE ibid the application to the Central Government be filed within three months from the date of communication of the order to the applicant

against which the application is being filed.

applicate and shall be made in from EA-8 in duplicate and shall be filed in themanner

जन्द्रीय प्रशासनिक अधिकारण entral Administrative Tribunal contd...p/2 1 0 JUN 2008

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Sub-section 3 of Section 35EE of the Central Excise (Appeals) Rules, 2001 in thirms of Sub-section 3 of Section 35EE of the Central Excise Act, 1944 the application alkall the amount of duty and interest demanded associated by fee of Rupees Two Hundred if the amount of duty and interest demanded fine or panalty levied is one lakh Rupees of duty and interest demanded fine or panalty levied is one lakh Rupees

In any other case, the appeal shall lie under section 35B of the Central In any other case, the appeal shall lie under section 35B of the Central Indianate Tribunal at Biamboo Art., 1944 to the Central Excise and Service Tax Appellate Tribunal at Biamboo Villa, 199, A.J.C. Bose Road, Kolkata -700014 within three months from the date of which villa, 199, A.J.C. Bose Road, Kolkata -700014 within three months from the date of which villa, 199, A.J.C. Bose appealed against is communicated.

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

The appeal should be accompanied by a fee of (i) Rupees One thouland if the mount of duty and interest demanded, fine or penalty levied is Five lakh ruppes or and interest demanded, fine or penalty levied, fine or penalty levied, fine or penalty lakh rupees; (ii) Rupeas ten Five lakh rupees but not exceeding fifty lakh rupees; (iii) Rupeas ten than thousand if the amount of duty and interest demanded, fine or penalty levied is more than thousand if the amount of duty and interest demanded, fine or penalty levied is more than thousand if the amount of duty and interest demanded, fine or penalty levied is more than thousand if the amount of duty and interest demanded, fine or penalty levied is more than the sent of the Tribunal on a Nationalised Bank payable at Kolkata and the diffmand

shall be attached to form of appeal.

Sharp application made before Appeallate Tribunal (I) In an appeal for grant of stay of the rectification of mistake or any other purpose; or (ii) for restoration of an appeal or an appeal

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

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

Attention is also invited to Rule covering these and other related matters

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देननीय प्रगापनिक अधिकार contd....p/3 Central Administrative Iribunal V(05)2/XAP-37/RA/DIB/2005. 13/ - 68

designant Commissioner, Central Excise, Dibrugarh.

MIS Chubwa Tea Estate .

The present Review Application is directed against the Order-in-Original No. 5.8.05 passed by the Assistant Commissioner, Central Excise, Diorugarh.

2. Packs of a... case in brief are: The respondent filed a refund claim for an amount 2.8 s. 1.10.61,418 /- for the period from 8.7.99 to 28.2.03 in terms of Notfin. No. 33/99-2.00 in the appellant is eligible for the Notfin. No. 33/99-2.00 in the appellant is eligible for the Notfin. No. 33/99-2.00 in the appellant is eligible for Notfin. No. 33/99-2.00 in the appellant is eligible for Notfin. No. 33/99-2.00 in the appellant is eligible for Notfin. No. 33/99-2.00 in the appellant is eligible for Notfin. No. 33/99-2.00 in the appellant is eligible for Notfin. No. 33/99-2.00 in terms of Notfin. No. 33/99-

and condition of order dated 5.8.2005 it was observed that the Assistant Commissioner erred in relying on the decisions passed by the Hon'ble Tribunal insofar as and his matter findicated that it was the case of a first claim under the notification to ... de ligibility was also interlinked . Besides the Hon'ble Tribunal in the responsible Serve Am industries (P) Ltd case [2003 (141) ELT 242 (T)] recognized the time limit prescribed under 11B of the CEA, 1944. They are also of the opimon that Lat. 17 closting authority did not take into account the limitation prescribed under the limitation Act, 1963 which is the general law of the land on the issue of man and has application in all cases where the specific statute does not provide for limitation. Sizza ted Limitation Act, 1963 provides for a time limit of three years from the light to sue accrues, cases where refund applications have been made before the proper officer beyond a period of three years from the date of accrual of such time barred. Further, the adjudicating authority had ignored the doctrine the second entire of fiscal statutes. The notification under consideration provides for a fire fimily for making refund claims. Therefore it is contended that the Apex Court's 44/3. Clin. Plaments case [2005 (181) ELT 145] that exemption notification: has to be read on its own terms is squarely applicable to the matter under consideration. It hat in an identical case involving M/S. Napuk T.E. & M/S. appeal filed by the Department against Order-in-Appeal No. 13/CE AND HY/2005 dated 23.2.2005 is sub-judice before the Hon'ble CESTAT.

- 3. The case was posted for hearing on 31.1.06. The appellant vide his letter No. V(2) is placed N/3c/ACD/2005/263 dated 30.1.06 intimated that the grounds of appeal source considered in this regard. Copy of the appeal petition was sent to the respondent that there also asked to appear for hearing on 31.1.06. They submitted written this case wide their letter dt. 24.1.06 and requested to waive their personal presence.
- 4. And capability gone through the case records and respondent's written achievasions in lieu of personal hearing. I find that the Commissioner in the Review order did not treatly the species arising out of the order which are to be determined by this forum. To Commissioner vide the Review Order directed the Assistant Commissioner to the appeal on the heart of statement of facts and grounds of appeal appended to the order. But no such grounds of appeal determined by the Commissioner was filed with the appeal partition. The review application suggests that the grounds of appeal are filed by the registent Commissioner himself. Section 35E(2) requires that Commissioner herself did referring the points on which basis the impugned order is held to be illegal and trappear and should specify the points to be determined in appeal. The Assistant Commissioner carbot form the grounds of appeal. The Review Application is liable to be

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case of Ballarpur Industries Vs CC [2000 (126) ELT 965 (T)].

and the impugned order clearly reflects that the refund was granted to the basis of Assistant Commissioner's order No. DIV/DIB/Ref/ACD/01/05-10.5.05. It is also recorded in the impugned order that the respondents' under Notification No. 33/99-CE dated 8.7.99 as amended was been challenged before any legal forum. I also find that the order has been challenged before any legal forum. I also find that the order has been challenged before any legal forum. I also find that the order has been challenged before any legal forum. I also find that the order has been challenged before any legal forum. I also find that the order has been challenged before any legal forum. I also find that the order has been challenged before any legal forum. I also find that the order in grounds of appeal is that the Assistant Commissioner erred in decision has been relied upon in the impugned order. This clearly shows that this only prounds of appeal is utterly baseless. The other contention in the grounds of appeal are also not sustainable as those are not the subject matter of the order impugned affore the The grounds raised in the Review Application are therefore baseless.

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

7. I siso first that the Respondent's written submissions filed in lieu of personal matter of delay in submission of refund claim, limitation under the state. Let, 1963 and contempt for non-implementation of specific orders, directions addecisions of the judicial and higher quasi-judicial authorities none of which is the liter of the present appeal. I therefore hold that these submissions are not at all relevant and appears to have the second and the second account of the present appears.

recorded above I uphold the impugned order and reject the

Review application.

(A.K.PAWAR)

COMMISSIONER

NTRAL EXCISE (APPEALS)

CUSTOMS & CENTRAL EXCISE (APPEALS)
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· sa/~ (N.PHUKAN) SUPERINTENDENT (APPEALS)

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Annexure-S

GOVT. OF INDIA OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE DIBRUGARH

Milan Nagar 'F' Lane, P.O. C.R. Building, Dibrugarh- 786 003
Phone No.2314079/81/82 & FAX No. 0373-2314031
E-mail:cmmdbr@sancharnet.in

BY SPEED POST/FAX C.No.V(30)77/Appeals/05/8156-60

Dated: 22/9/17

The Deputy / Assistant Commissioner,

<u>Central Excusse</u>.

<u>Tinklikin</u>,

A. Salaha

a di Cambilli

Subject: CESTAT's Order No. A-593/KOL/2006 dated 04/07/2006 in the matter of CCE, Dibrugarh - VS M/s Napuk Tea Estate & M/s Muttrapore Tea Estate - C/r.

Please refer to the Hon'ble CESTAT's Order No. A-593/KOL/2006 dated 04/07/2006 in the matter of Commissioner of Central Excise, Dibrugarh – Vs – M/s Napuk Tea Estate and M/s Muttrapore Tea Estate. The said Order dated 04/07/2006 passed by the Hon'ble Tribunal has since been accepted by the Commissioner of Central Excise, Dibrugarh. You are, therefore, directed to initiate necessary action for disposal of milar cases including pending refund in line with the decision of the Hon'ble Tribunal per law.

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Wo 22.09,06

(N. PATHAK)
JOINT COMMISSIONER

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Annexure-T

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CENTRAL EXCISE COMMISSIONERATE:: DIBRUGARH

Lane F, West Milan Nagar, Dibrugarh-786003, Assam

Ph.: 0373-2315258, Fax: 0373-2319263, E-mail: commdbr@sancharnet.in

File No. II(39)9/Audit/Misc/Dib/05/11314-17

Date - 23.11.2006

6/11/0E

To,

Assistant / Deputy Commissioner,

Thankla Division

Central Excise,

Tunsukia.

Subject:- Procedure relating to sanction, pre-audit/post audit and review of Refunds under Notification Nos. 32/99 C.E. and 33/99 C.E. both dated 08.07.1999, reg.

Please refer to letter 00000 dated 000 of the Commissionerate circulating the Adl. Commissioner, C.C. Office's letter dated 11.07.2006 regarding the procedure relating to sanction and pre-audit/post audit of refund claims arising out of Notification Nos. 32/99 C.E and 33/99 C.E. Para 4 of these instructions reads as under —

"All Refund claims sanctioned to these units against duty paid through Account current and self credit in the Account Current should be pre-audited compulsorily if the amount involved is more than Rs. 5 lakhs. In order to keep up the time limit, all such refunds should be sanctioned on provisional basis and the claims should be referred to the Audit Department for pre-audit. The pre-audit should be completed within 45 days."

Other instructions given therein, are also regarding pre-audit and post-audit of these refund claims. These instructions have no where referred to issue of the refund cheques to the claimants. From above instructions, it was clear that as the pre-audit has to be completed within 45 days, refund cheques can not be held up for such time. It will defeat the very purpose of the instructions issued. As there were no instructions regarding issue of refund cheques, the matter was taken up with the Chief Commissioner's Office for clarification.

This practice to issue provisional order for pre-audit created problems at Audit stage. Almost in all cases, Divisions started to issue Provisional Refund Orders stating that it was as per Chief Commissioner's Office instructions dated 11.07.06. There is no provision to issue as well as to do pre-audit of provisional Refund Orders. Refund can be sanctioned provisionally and refund cheque can be given to the party but the Refund

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To overcome these problems, following instructions (as already issued by the Commissioner, Central Excise, Shillong vide Office Order No. 01/05 dated 25.10.05 and forwarded by the Chief Commissioner's Office for guidelines) are issued to Divisions / Audit Section of the Headquarter.

(i)The refund as claimed by the assesses would be passed and cheque issued before 15th of the month after checking arithmetically and checking availability of CENVAT.

- (ii) The detailed order both on merit and quantum would be prepared in the file and the file would be sent to the Hqrs. For pre-audit before 20th after issuing cheque.
- (iii) The claim would be pre-audited and approved by the Commissioner and file returned by 5th of next month if order issued is found to be acceptable.
- (iv) The refund order would be issued as per observation in pre-audit before 15th of next month. Wherever personal hearing is required, the same should also be accorded to meet the ends of justice.

No Provisional Refund Order will be issued for pre-audit. The Board's Circular No. 354.08/98-TRU dated 09.07.1998 also does not provide for issue of a Provisional Refund Order. Para 7 of these instructions provides that "If there is any delay in verification of the claim for refund of PLA duty, the Assistant Commissioner/Deputy Commissioner may allow the refund for that month on provisional basis and thereafter adjustment, if necessary, may be made in the refund of the subsequent month. This is to ensure that there is no delay in sanction the refund claims." The instructions no where provides that a refund order can be issued provisionally.

In view of the above, the practice of issuing Refund Orders Provisionally in this Commissionerate is not as per the existing instructions/guidelines. The correct procedure is as given above instructions (i) to (iv), and as issued by the Commissioner, Central Excise, Shillong. The Divisions should send the refund files to Hqr. for audit of Refund claims after issue of refund cheques. The Refund can be sanctioned provisionally and cheques can be issued to the units, but the refund orders have to be issued after scrutiny/verification/processing of all the relevant documents and pre-audits of these claims.

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From the instructions issued by the Board and the Chief Commissioner and Commissioner, Central Excise, Shillong, it is observed that these instructions are applicable in cases where the units availing refunds under Notifications 32/99 and 33/99, on monthly basis and for the duty paid in PLA for that month. These are not applicable where the refunds are of previous periods (in most cases more than 2 or 3 years old) and there are no current/subsequent refunds from where their erroneous refunds can be adjusted, if not passed in the pre-audit. Hence these instructions are not applicable in cases where the units have filed refund claims after number of years, mostly in T.E. cases. In such cases, Refund Cheques should be issued only after Refund Order is passed in pre-audit (as per monetary limit).

It is also observed that Divisions are clubbing refunds of different months in a single order just to make it above Rs.5 lakh. All the Divisions are directed to process the refund claims of an unit month wise or claim wise as filed by the unit, and not to club these simply to make a single claim of higher amount. The Divisions are also directed to send their refund files in original (along with all the relevant papers on which basis the Refund Order is prepared) to Hqr. for audit and not simply Refund Order of a single page. Divisions should not pass any Refund Order provisionally. The order has to be final. The Refund cheque can be issued without Refund Order against an undertaking as being done presently, and after issue of the refund cheque, the refund file containing Refund Order and all the relied upon documents should be sent to Audit for pre-audit of the Refund Order. Audit Section of the Hqr. will adhere to the time limit fixed by the Chief Commissioner for audit of these cases.

All the Divisions are directed to follow the above instructions on the above lines to streamline the procedure relating to sanction, pre-audit/post audit and review of Refunds claims under Notifications 32/99 and 33/99. If there is any problem in implementation of these instructions, it should be brought to the notice of the undersigned or the Commissioner immediately. All the provisional / pending cases should be finalized on the basis of above instructions.

It is issued with the concurrence of the Commissioner.

(Nagesh Pathak)

Joint Commissioner of Central Excise

Dibrugarh

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH: GUWAHATI

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In the matter of:-

O.A.No. 122 of 2007.

Shri Himangshu Ranjan Saha.

-Versus-

Union of India and Others.

-And-

In the matter of:-

An Additional rejoinder submitted by the applicant.

The applicant above named most humbly and respectfully begs to state as under;-

- 1. That your applicant has preferred a Misc. petition no. 92/2008 praying for a direction upon the respondents for production of following records at the time of hearing of the original application.
 - (i) Relevant records pertaining to refund claim/eligibility order dated 16.05.2005 passed in favour of M/S Kakajan T.E.
 - (ii) Relevant records pertaining to eligibility order dated 10.05.2005 passed by the applicant in favour of M/S Chabwa T.E.
 - (iii) The investigation report of the C.B.I, if any, submitted therefore, before the departmental authority on the allegation, which is the subject matter of the impugned memorandum of charge sheet dated 22/25.09.2006.
- 2. That however, the respondents by filing a counter reply denying production of the aforesaid records without assigning any valid ground. The respondents in their reply it is alleged that the records prayed for

Hemangslen Ro. Inlea.

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production before the Ld. Tribunal are not relevant with the instant proceeding. In other words the contention of the respondents that there is no reference of these documents in the memorandum of charge sheet, as such they are not duty bound to produce before the Learned Tribunal. The decision of the respondents is not to produce the record before Ld. Tribunal is highly arbitrary and deliberate and as such the said decision is also prejudicial to the interest of the applicant. Moreover, the relevancy of the documents are explained hereunder for perusal of the Ld. Tribunal. These documents/records prayed for production by the applicant are very much relevant for proper adjudication of the case of the applicant.

So far documents/records pertaining to eligibility order dated 16.05.2005 and 10.05.2005 refund order dated 03.11.2005 and 05.08.2008 passed in favour of M/S Kakajan Tea Estate M/S Chabwa Tea Estate respectively prayed for production before the Ld. Tribunal in order to establish the fact that both the eligibility order/refund order have been passed in the same manner and within the period of limitation and the nature/refund order are exactly similar in nature and refund order have been passed under the same Notification No. 33/99-CE dated 08.07.1999. But the authority deliberately found fault with the applicant with regards to passing the refund order in favour of M/S Chabwa Tea Estate. But surprisingly, the same Commissioner, Dibrugarh Smti. Eva M.R.Hynewiate, did not find any fault with the refund claim or eligibility order dated 16.05.2005 and refund order dated 03.11.2005 passed exactly in the same manner in favour of M/S Kakajan Tea Estate by the eputy Commissioner, Central Excise, Jorhat.

3. That it is pertinent to mention here that the Commissioner, Dibrugarh Smti. Eva. M.R. Hynewiata, approved the eligibility order and refund claim order dated 16.05.2005 and 03.11.2005 passed in favour of M/S Kakajan Tea Estate as such initiation of disciplinary proceedings against the applicant on the similar facts and circumstances, more so there is no infirmity in the order of refund claim passed by the applicant on 05.08.2005 as such record pertaining to the refund claim dated 03.11.2005 is very much relevant for the Hon'ble Tribunal for proper adjudication of the case of the applicant.

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The objection of the respondent that there is no reference of the refund order dated 03.11.2005 in the instant proceedings is not sustainable in the eye of law.

the instance of the Commissioner, Central Division, Dibrugarh, Assam, the CBI, Guwahati carried out an investigation on the instant refund order which would be evident from the letter bearing no. 214 (A) 2006-GWH/828 dated 09.02.2007 addressed by CBI, ACB, Guwahati Branch against the applicant in respect of refund order passed in favour of M/S Chabwa Tea Estate, Dibrugarh for Rs. 77,52,409/- for the period 08.07.99 to 28.02.2003 out of the total refund claim of Rs. 1, 10. 61,418/- under Notification No. 33/99-CE dated 08.07.1999 which was addressed to the Senior manager, M/S Chabwa Tea Estate, Dibrugarh, Assam. Therefore it is quite clear from the letter dated 09.02.2007 of CBI, ACB, Guwahati that an investigation has been carried out on the alleged fraudulent refund. Therefore relevant records pertaining to CBI investigation is necessary for perusal of the Ld. Tribunal for purpose for adjudication of the case of the applicant.

In the circumstances stated above, finding of the CBI investigation has got a bearing upon the instant proceedings. As such investigation report carried out by CBI is very much relevant and perusal of the same is very much necessary for the purpose of adjudication of the case of the applicant.

Copy of the eligibility order dated 10.05.2005, refund order dated 05.08.2005, CBI letter dated 09.02.2007, letter dated 30.06.2009, refund order dated 03.11.2005 and 20.04.2005 are enclosed as <u>Annexure- A</u>, <u>B, C, D, E and F</u> respectively

5. That it is stated that the present applicant passed sanction of refund order on 05.08.2005, after declared eligibility on 10.05.2005 in respect of M/S Chabwa Tea Estate, Dibrugarh, whereas similar declaration of eligibility and sanction of refund order during the relevant period has been passed by the Jorhat Division office as well as Digboi Division Office. The details of the orders are furnished hereunder for perusal of the Hon'ble Tribunal.

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Sanction of Refund by the applicant on 05/08/2005 after allowing eligibility on 10/05/2005.,
 M/s Chabwa Tea Estate, Dibrugarh Rs. 77, 52,409.00 Pre-Audit

 Refund Sanction by Divisional officer, Jorhat on 03/11/2005 after allowed eligibility on 16/05/2009 to M/s Kakajan Tea Estate for Rs. 1,18,86,282.00. (without Pre-Audit)

M/s Suntiuk Tea Estate for Rs. 11,66,441.00 Order No. 13 dt 20.04.2005 (without pre-audit)

3. Refund sanction by Divisional officer, Digboi as follows: (All cases Pre-Audit.)

Sl.No	Name of the	Date of	Amount	Sl. No. in the
•	Assessee/factory	Sanction		list submitted
				by the letter
				dtd. 30.06.2009
a)	M/S Classic Tea Co. Pvt.	04/03/2003	Rs. 6,27,155.00	01
	Ltd. Rupaisiding			
b)	M/s Aurora Packers (P)	07/01/2004	Rs. 12,59,682.00	02
	Ltd, Doomdooma		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	<u> </u>
C)	M/s MKB (Asia)Pvt. Ltd,	02/01/2003	Rs. 31,88,692.0	07
	Doomdooma		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	Ů,
d)	M/s Bogapani Tea Estate	23/03/2005	Rs. 31,54,904.00	65
	Digboi			00
e)	M/s Greenfield Tes Co.	29/09/2004	Rs. 13,70,889.00	70
	Digboi	, ,	, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	
f)	M/s Lekhapani Tea Co,	29.09.2004	Rs. 16,70,909.00	71
	Lekhapani			, ,
g)	M/s Hamukjan Tea	21.04.2004	Rs. 9,05,947.00	73
}	Co.Ledo		1 3,00,51,00	,,
h)	M/s Koomsong Tea	09.10.2006	Rs. 31,54,904.00	
-	Estate, Doomdooma		1.0.01,01,004.00	

The contention of the applicant also evident from the letter no. C.NO.V(16)24RTI ACT/CE/DIG/2006/1943 dated 30.06.2009, letter no. C.No.V(18)112/ACJ/REF/2004/4083 dated 03.11.2005, letter no. C.NO.V(18)28/ACJ/REF/MISC/2004/1611-13 dated 20.04.2005.

6. That it is stated that it is relevant to mention here that all the orders declaring eligibility and sanction of refund orders have been passed during the relevant point of time exactly on the same manner, following the similar guidelines, norms, rules etc. issued by the authority on the subject from time to time. But surprisingly no objection has been raised by the then Commissioner in respect of sanction of refund order passed in other

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division. But objection has been raised against the sanction of refund order on 05.08.2005 passed by the applicant. As such the applicant is meted out with hostile discrimination in the matter of initiation of the instant disciplinary proceeding with a malafide intention to spoil the service career of the present applicant.

It is pertinent to mention here that due to initiation of alleged disciplinary proceeding the case of the applicant has not been favorably considered in the cadre of Dy. Commissioner and the findings of DPC is kept under sealed cover.

7. That it is stated that as there was no clear instruction/guidelines from the Commissioner, Central Excise, Dibrugarh in respect of Refund under Notification No. 32/99-CE & 33/99-CE both dated 08/07/1999, Boards circular no. 354/B/90/TRU (part-II) dt. 06/09/1999, clearly mentioned that these cases are not covered under Section 11B of Central Excise act 1944. (Circular Enclosed)

The refund was sanctioned after completion of necessary formalities like Personal Hearing etc as per Central Board of Excise & Customs guidelines and as a Quasi-Judicial authority under Section 33 of Central Excise Act 1944.

If any objection against the Quasi - Judicial Order of a sub-ordinate officer, Commissioner can exercise his/her power under Sec. 35 E of C E Act 1944, to file appeal before the Appellate authority. Commissioner can't stop the order of his Sub-ordinate officer without valid & proper ground. In this Case only on whimsical ground by pointing out all non related matter, Joint Commissioner has tried to stop the refund. However, the said Jt. Commissioner his vide letter C.No V (14)19/PRE-AUDIT/DIB/2005/8670 dt. 25/07/2005, in the last Para ordered to pass an order on merit keeping the principle of natural justice. As I have already allowed the eligibility after granting natural justice to the party sanctioned the refund accordingly on merit as instructed.

The applicant has adjudicated the case on 10/05/2005 a week before the eligibility passed by the Deputy Commissioner, Jorhat. The Deputy Commissioner, Jorhat also not applied for pre-Audit before sanctioned the Refund of Rs. 1,18,86,282.00. He simply wrote a letter to the Commissioner

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for some clarification regarding sanction of refund, but Commissioner on reply to the clarification, the same Joint Commissioner on behalf of the Commissioner vide his letter C.No. V(30)79/Appeals/05/20530 Dt. 27.09.2005 allowed the Jorhat office to sanction the refund with out preaudit clearance of the amount of Rs. 1, 18, 86,282.00. If pre-audit was at all required for the amount above Rs. 5 lakhs cases, how the Commissioner allowed Jorhat office i.e. there was not require for pre-audit.

The main point is how the same Commissioner and the same Joint Commissioner, made several queries again & again, but in the same nature case of Refund under same Notification under same type of refund case how the same officer allowed without any query.

However, subsequently the Commissioner, Central Excise, Dibrugarh filed an appeal before the Commissioner (Appeals), Central Excise, Guwahati, wherein favourable judgment has been passed in favour of the applicant vide its order dt. 31/01/2206 rejecting the appeal.

In the same nature of case, Hon'ble Central Excise and Service Tax Appellate Tribunal (in short CESTAT), Kolkata, has also rejected the appeal filed by the Commissioner, Central Excise, Dibrugarh regarding limitation etc vide their order No. A-593/KOL/2006 dt. 04/07/2006 in the matter of Commissioner Central Excise –Vs- M/s Napuk T.E & M/s Muttrapore T.E which was accepted by the Commissioner, Dibrugarh with direction to initiate necessary action for disposal of similar case including pending refund cases in time with the decision of the Hon'ble Tribunal (CESTAT), Kolkata vide its letter no. C, No.V (30)77/Appeals/05/8156-60 dt. 22/09/2006. (Copy Enclosed in the original application as Annexure-S)

In the circumstances as stated above the original application deserves to be allowed with costs

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VERIFICATION

I, Shri Himangshu Ranjan Saha, son of Late Hem Ranjan Saha, aged about 58 years, working as Assistant Commissioner, Central Excise, Guwahati, applicant in the instant Application, do hereby verify that the statements made in Paragraph 1, 2, 3 and 7 are true to my knowledge and those made in Paragraph 4 and 5 are derived from the records and I have not suppressed any material fact.

And I sign this verification on this the 17th day of December

Himangshe Rr. Sale.

केन्द्रीच प्रशासिक न्याबालय 2 2 DEC 2009 Guwahati Berich गुवाहारी न्यायपीठ

GOVT OF INDIA OFFICE OF THE ASSISTANT COMMISSIONER : CENTRAL EXCISE

:DIBRUGARH:

Order No. DIB/DIV/REF/ACD/ 01 /2005-06/ diam.

Dt. 10.05.2005

SUB: Eligibility claim submitted by M/s Chubwa T.E., P.O. Chabua in terms of notification no. 33/99CE dt. 8.7.99 covering the period from 08.7.1999 to 28.2.2003 - Reg

Brief facts:-

M/s Chubwa Tea Estate (Tata Tea Limited), P.O.Chabua ,Dist. Dibrugarh ,holding Central Excise Registration No AABCT0602K-XM-008 (horein after called as the said applicant) an unit registered with tho Central Excise department to manufacture 'tea including teawaste' falling under Central Excise Tariff sub-heading No. 0902.00 of the Central Excise Tariff 1985.

The said applicant submitted claim of eligibility in terms of notification No. 33/99CE dt. 8.7.99 covering the period from 08.7.1999 to 28.2.2003 and exemption on the amount of the Central Excise duty paid through account current on clearance of their products. The said claim in terms of ibid was submitted at this officement wise from July 1999 to February 2003 under one covering letter Ref nil dt. 18.10.2004 The said applicant submitted all the required documents to justify their claim as prescribed in terms of notification ibid.

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On receipt of the said claim and documents the said applicant was asked as to why they have failed to submit their monthly statement of duty paid through account current for the month of 8th July 1999 to Rebruary 2003 which is required to be submitted willin'7" days of the next month in which duty has been paid from the account current as prescribed in the notification No. 33/99CE dt. 8.7.99. In their reply vide cition dated 30.11.2004, they stated that "there is nothing in the notification which bars in submitting claim atia later date. The above facts have been accepted by the department in a number of cases decided by the Instia T and Commissioner (Appeals)." A set of the documents was forwarded to the concerned Range Officer requesting him to offer his comments and to confirm the position of the said applicant regarding receipt of the RT 12. R.O. submitted his verification report on 12.01.2005 and a site verification was descending 6.02.2005. A porsonal hearing was accorded to the said applicant on 20.4.2005 Min the Duttacliaudium appeared for the same and he submitted a written submission along with copies of seconds of almilar and identical issued decided by different higher forum and accepted by the Department. He also stated that they had the idea that to avail the Central Excise duty exemption in terms of Notf. No 33/99CB expansion in all section was necessary. But in a number cases decided by the CESAT and Compulsioner Appeals the issue have been settled and confirmed that increase in installed capacity in limiting section result in overall inorcase in the installed capacity shall entitled the unit to avail the exemption benefit in terms of North No. 33/99GP, Moreover there is no bar in submitting claims at any thing in the Motf. Ibid if there is eligibility. He prayed to condone the lapse and accord their claim on the distlication the submitted documents as there have been expansion by 25% or more on or after 24.12.1997 in their case. On receipt of the and command economic medic same appropria

tomphunit their include statement of day pard through his way or his constraint which seems to Ringings: 2003 which is required topos subminered within 7th Lays on the reason meaning a wing and become Paid rigon the sibedent current soffices rived in the notificiance by some the way of the companies lene (dislow the case) is to be decided whether they are eligible for considering the eligibility and also to obadone the lapse on their part of the said assessed in timely submission of the claims in terms of Consecutive and the contractive shall be contractive shall be contracted to the contractive shal

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Central Administrativa Tribuma केन्द्रीय प्रशासनिक न्याबालय 2 2 DEC 2009

> Guwahati Bench गुहाहाटी न्यायपीठ

On porusal of the Registered Chartered Engineer's evolution report dated 25.6.2004 submit with the said applicant's letter dated 18.10.2004 along their claim papers and report dated 21.122 and 05.5.2005 it was noticed that the said assessee purchased three Nos of CTC and three Nos CFM. modified their withering troughs to increase their installed capacity during the period December 1998 March 1999. On perusal of both the report dated 25.6.04 and 21.12.2004 and 05.5.2005 of the Charte Engineer the section wise capacity evolution reveals as follows (taking 300 working days)

Pre-expansion capacity as on 24.12.1997 capacity

Post expans

Withering Section- 42 Nos troughs 22 nos 100 x 7 10 nos 85 x 6.5 2 nos 80 x 6.5 8 nos 72 x 6.5 Capacity -33,93,588 kg /annum

12 nos 85 x 6.5 2 nos '80 x 6.5 8 nos Capacity- 39,52,872 kg /annum Troughs were further midified & reduced to 31 Nos & capacity 4971912 kg/mm

Rolling section 15 nos rolling table

Rolling section

46Nos troughs.

72 x 6.5

43,29,600 kg/ anum

22 nos 100 x 7

6150 kg/hr

43,29,600 kg/ anum

Whethe mid applicant is better desper 11.10. This have the later and application of the said united and the said united application. No change the first the said united application of the said application of the said application of the said application and the said applica

CTC section Pre-expunsion supagity as on \$4.42.4997 Capacity Vikram CTC machines 700kg/hr

Capacity 19,71,200kg/annum

2,nos 80 x c >

3 nos CTC machines replaced by Installing 3 now Vikram 36°CTC 3 nos 1100 kg/hr 1 no 700 kg/hr Capacity 28,16,000 kg/annum

Fermenting section 138128addlee49.kg/saddle 15 nos rolling taleus

6150 kg/ hr 43,29,600 Lg alum 78 saddlos 110 kg/saddle 4,11,840 kg/ anum 3 nos CFM each capacity 1100 kg/hr Capacity 23,23,200 kg/ anum

4 squarety 49,82 672 by maritim

apacily 132,31,360 kg/annum

Capacity of rolling section

Capacity of rolling section

APPYING section 3, 200 - 66, 52, KIN) he and an

conventional dryer 2 nos 140 kg/hr MFBD dryer 2 nos 300 kg /hr VFBD-FF dryer 1 no 450 kg /hr total capacity, 23,23,200 + 4,11,840 = 27,35,040 kg/ annum

Mar Nos Viloram CTC machines 7001 whi

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Control Administrative Proune केन्द्रीभ प्रशासिक न्याबालय 2 2 DEC 2009 Guwahati Bench

ग्वाहारी न्यायपीठ Limiting capacity of 4Nos CTC machine before expansion was 19,71,200 kg/anum, which is the installed capacity before expansion in this instant case.

Limiting capacity of fermenting section after expansion is 27,35,040 kg/anum, an increase of 38% in this instant case. Additional electric power load was added during the expansion period as found and oited by the Chartered Engineer.

From the above it appears key machinery installed is 2Nos rotorvan, 3 CTC and 3 nos CFM and in Other section modification addition of 4 nos of troughs, to increase the installed capacity. In support of the expansions they produced submitted the supporting documents viz. bills vouchers etc.

The Chartered Engineer also mentioned the date of completion of installation of the machineries in his evolution report dated 25,6.2004 and 21.12.2004. From the bill/Invoices regarding procurement of plants and machineries i.e. CTC and CFM it is seen that the said machine was procured during January 1998 to February 1999 and installation was completed on 06.7.1999.

The concerned Range Superintendent was asked to submit his verification report on the basis of the said documents. In his verification report dated 12.01.2005 and 09.5.2005 the R.O. informed that, there have been expansion in the factory during the period January 1998 to March 1999. The R.O. informed that he has verified the ground plan, the report of the Chartered Engineer and found to be tallied with the papers regarding the procurement of the machineries. He also mentioned that the said assessee La Intimated the Range Officer before undertaking the expansion work and submitted post expansion groundiplan. The Range Officer also reported that the RT-12/ERE-1 were regularly submitted by the said applicate the permitter stipulated date und the same received properly at the Range Certificate from the supplies of the said certificate it was confirmed that interpretation was to brain and the said certificate it was confirmed that interpretation with the said certificate it was confirmed that their stock register maintained at go down.

discountific above it appears has qualification in the second of other Bland and Moudan No. 20705/2002/OX-6 dated 05.3.2002 issued through Trade Notice No. 104/02 dised 1214 2002 of the Commissioner of Central Brosse Shillong clarified the interpretation of 'substantial expansion in terms of Notification No 32 & 33/99CE. It has been clarified that :-

in his evolution ubstantial expansion of installed capacity may or may not mean expansion of plans in all the partition of the oligibility of description in terms of Norf. No 33/99CE dt. 8.7.99 led and the

From the Chartered Engineer evolution report it is noticed that the unit carried out expansion in thought section! In the CTC section where limiting capacity was 19,71,200 kg per annum, which was Allegaed as the installed capabity of the said applicant before expansion. This section was expanded by the limited new CTC to 28:16:000 kg per amount. But in the formenting section during the post estilistical the saddles were reduced to 78 saddles and three CFM were installed which effect in their Hanting Capacity to 27,35,040 kg por annum. Capacity of this CFM section have been assessed as the Healthy dapacity of the said applicant and this la valuated to about more than 38% than the unitial resiled Capable invaligations and they same acquired properly as the Range of criticate from the Will hon perusal of the notification it appears that there is no provision in the notification that this then foldire claim to file and claim carlier he automatically forfeits the claim for exemption under notification. In similar situations as in the case of the said applicant the Department has already accepted soveral Chief in appeals decided by the Commissioner (Appeals) Central Excise Guwahati Some of the socialed order in appeal against the units under the furisdiction of this Division Vizionance and attention P. Himsion' in terms of Mollication No 32 & 33799 CE. It has been charified that

1. OIA No. 11/CE(A)/GHY/2004 DT. 26.2.2004 in the case of Namroop T.E. 2. TANE 12/0E(A)/GPIY/2004 dtP26.2.2004 in the case of Achabam T.E. and dame at the City of the Mis Mand. TE

Hough address in the safe section closes for more and a little fixth in the safe section closes for more and a little fixth fixth throughout the safe section of the s William green parative in the small approximate the transfer or a recognization of the state of the state of the Hall block capacity of this change one

Out of the above the first two appeal cases are sister units of the said applicant of Tata Tea imited in the case on OIA No 11CE(A)GHY/2004 of M/s Namroop T.E. it has been held that if the substantive condition of the Notfn. Is fulfilled exemption under Notf. Can not be denied for procedural

Ehave also perused the copy of OIA. 04/CE(A)/GHY/2005 dt. 25.01.2005 in respect of tea units viz M's Duklingia T.E., Borholla T.E. and Suntok T.E., passed by the Commissioner (Appeal) Central Proise Guwahati as submitted by the said applicant during the course of personal hearing as similar case law in support of their claim. The said OIA have been accepted by the Department as mentioned in the copy of the Order dated 8.4.2005 passed by the Assistant Commissioner Central Excise, Jorhat submitted by the said applicant thiring the personal hearing on 20.4.2005. In all the above cited cases basic condition of eligibility for exemption in terms of Notf. No. 33/99CE dt. 8.7.99 is the unit should undertake substantial expansion by increasing installed capacity by not less that 25% on or after 24,12.1997 in case of existing units.

Further it has been clarified that the provision of Sec 11B shall not attract here in Notf. No. 33/99CE dt. 8.7.99 and the question of time bar cannot be applied in this case of late submission of cases under Notf, No. ibid. The sanctioning authority has to decide and analyze on the basis of the submission of documents and to confirm whether or not there have been expansion or not by 25% on or after 24.12.1997. Our of the

Allow it is other as paint manager -Chartered Engineer's Report dated 25.06.2004 and 21.12.2004 and the Range Supermondent's verification report dated 12:01:2005 and 09.5.2005 there have been expansion in the said mitton or after 24.12.97 by 25% or more than the initial installed capacity by installation/modification of machineries. (38% in this instant ease) During the course of spot verification undertaken form this end on 16.02.2005; reveals the above fants and leads to the conclusion that there have been increase in installed chosoity in the unit with complete new machineries on or after 24:12:1997 and thereby the unit suffill the condition of clause 3(b) of the notification not 33/99 CB dt: 08:7.99.

by in support of their claim. The sand Call have been excent in the description of the mentioned in the Eppy of the view of the above stated circumstances it appears that the claim of eligibility for considering period frim 08.7/1999 to 28.2.2003 has got ground as the said unit has under gone expansion on willter 04. 12.97 After careful scrutiny of all the documents, pertaining to benefit of refund submission by the said applicant. I have every reason to believe that the contention towards the benefit of refund in terms of ulause (3 (b) of notification No. 33/99CE dt. 8.7.99 is justified and the said unit is eligible to avail the benefit of expansion in terms of notification ibid w.c.f 8.7.99. Therefore the said applicant is eligible to avail the benefit of exemption in terms of ibid wie.f. 08.7.99 to February 2003.

33/990 C di 8.7 59 and the question of the continuent of pair and the late of particular and of the sunder Mod No. 10 and No. 10 and the sunder management of the sunder Mod No. 10 and No. 10 and 10 decuments and to contain whether ORDER have have been experience of the contained on the area 24.12.1997

In view of the above discussion and findings I hereby held that the said applicant is eligible to get the benefit of exemples in terms of Notification No 33/990E dt. 8.7.99, for the period from Osimi1999. This order is issued provisionally and subject to outcome of finalization of pro audit as all the though wise blaims submitted in one covering letter (though month wise claims shown separately). machineries (190% in this instant case) thereby the reason of specification of distances from the analysis and security. 16.02.2005, recease the above becaused leads to the accumisms that the above translated departed by the house with conveniers made anatomeries on as act and the base Charling of statuse sun) or me nonaignance in his some a single

Will to stay to a gope in given or the above stated throughness it appears that the commissioner of the The place of the area of the state of the state of the contral excise: Dibrugary of the contral excise: Dibrugary of the state of the contral excise: 29. Profession start accomplishment of all the documents, periodic gardeness to be a sit of the control of the same of the sam

Chairs will give of martin above two is a great and 12.75% is greater at and the cast man thenefit of expansion in things or distinguish dentisting the control of the avail the compile of Secretion in corns of hill ray to on the

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C.No.V(18) 09 /REF/ACD/2004/

Dt.

Copy to M/s Chubwa T.E. P.O. Chabua , Dibrugarh, Assam -786012 for information.

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

C.No. V(18)09/REF/ACD/2004/ 1777-90

Dr. 11/5/05

Copy for information to the :-

- 1. Commissioner Central Excise, Dibrugarh
- 2. Joint Commissioner (Audit), Central Excise Dibrugarh. (along with documents)
- 3. Superintendent, Central Excise Dibrugarh Range III

Refund section Central Excise, Dibrugarh for information.

Copy in New Chairma 1 : E O Chapter Dipropers South 260 21 1 ...

(H.R.SAHA)

ASSISTANT, COMMISSIONER
CENTRAL EXCISE:: DIBRUGARH

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Guwahati Bench गुवाहाटी ऱ्यायपीठ

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OFFICE OF THEASSISTANT COMMISSIONEROF CENTRAL EXCISE DIBRUGARH DIVISION

Order No. 14/REF/05-06

Place; Dibrugarh Date: 05/08/2005

Contd P/2

M/s. CHUBWA T.E., P.O., CHABUA, Dist. Dibrugarh, holding a Central Excise Registration No.AABCT0602K-XM008 (hereinafter called as 'the said applicant'), an unit registered with the Central Excise Department to manufacture 'tea including Tea waste' falling under Central Excise Tariff sub-heading No.0902.00 of the Central Excise Tariff 1985. The said applicant has submitted refund claims of duty covering the period from 08-07-1999 to 28-02-2003 for the total amount of Rs.1, 10,61,418.00 (Rupces One crore ten lakhs sixty one thousand four hundred and eighteen only) paid through their PLA No.SH/95 with this Office in terms of the Notification No.33/99-CI: dated 08-07-1999 (details

On scrutiny of the submitted documents it has been found that the said applicant have been existing and have undertaken, substantial expansion by tway of increase in installed capacity of their factory by more than 25% on or after 24-12-1997. Therefore, prima-facte, it has been found that the said M/s. Chubwa T.E., Dibrugarh, are entitled for the benefit as provided under clause 3(b) of the Notification No.33/99-CE Dated 8.7.99. Their case has been considered by this Office vide Adjudication Order No.DIV/DIB.REF.ACD/01/05-06 Dated 10105 2005. The tate of eligibility of exemption in terms of the said Notification was determined w.e.f. 08-07-1999 in the said order dated 10.05,2005.

The refund claims in question have been verified with the relevant PLA, TR-6 & Invoices etc. as submitted by the applicant. The said applicant produced the original copies of the PLA. TR-6 challans on 06-05-2005, which have been verified from this Office. The month wise statements of accounts as submitted by the applicant were verified and found that the applicant have debited an amount of Rs. 1, 10,61,418.00 (Rupees One crore ten lakhs sixty one thousand four hundred and eighteen only) against payment of CENVAT/B.E.D. during the period from 08 207-1999 to 28102-2003 in PLANO.SH/95 So,a sum of Rs. 1, 10,61,418.00 (Rupces One crord ten lakhs sixty one thousand four hundred and eighteen only) paid as CENVAT/B.E.D. through PLA for the period from 08-07-1999 to 28-02-2003 is found to be admissible for refund. The provisions in terms of the Notif No.61/02-CE dated 23-12-2002 have also been examined and found that total debit in PLA amounting toRs.1, 10,61,418.00 is found eligible for sanctioning of refund. During the period under consideration, the said applicant paid the Centrell Excise duty against clearance of their goods from the CENVAT credit account amounting to Rs 10,489,130.00 (Rupees ten lakhs eighty nine thousand one hundred and thirty only). The said amount is not liable to be considered for refund. Though the said applicant have debited a total amount of Rs. 1,10,61,418:00(Rupees one erore ten lakhs sixty one thousand four hundred and eighteen only) in their PLA, it is noticed that our of their claims, 6(six) nost of monthly claims for the month of Aug.99, Sept.99, May, 2000, Sept. 2000, Nov. 2001, and December, 2001 involving amount over Rs. 5 lakhs or more in each case. As per existing procedure, this 6 claims of over Rs.5 lakhs each, are subject to pre-audit from the proper authority before passing sanction order. on solver halfly a resilient come the second of their culting our money with their course of the

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Therefore, these 6(six) nos.of refund claims involving total amount of Rs.33, 09,009.00 are kept pending for pre-audit clearance and the balance amount of Rs.77, 52,409.00(Rupees seventy seven lakhs fifty two thousand four hundred and nine) only for the months, which below Rs.5 lakhs, is taken for consideration for refund, to avoid interest burden as already claimed the applicant, vide their letter dated 28-06-2005.

In view of the above, I do hereby sanction of refund an amount of Rs. 77, 52,409.00 (Rupees seventy seven lakhs fifty two thousand four hundred and nine) only clubbing together all the monthly claims for period 08/07/99/ to 28/02/03 except for the months of Aug, 99, Sept. 199, May / 2000, Sept. / 2000, Nov. / 2001 and December, 2001, as per Board's letter F.NO. 268/25/2002/CE:8 Dt. 15-03-02, to said M/S CHUBWA T.E., P.O. CHABUA, Dist. Dibrugarh (Assam), in terms of the Notification No.33/99-CE dt.08.07.99 covering the period from 08 07.99 to 28.02.2003.

The subject refund of Rs.77,52,409.00(Rupees seventy seven lakhs fifty two thousand four hundred and nine only) is hereby sanctioned in terms of the Notification No.33/99-CE dt. 08.07.99 after verification of eligibility and payment particulars. Any excess/erroneously refunded amount will be demanded as provided under the Notification 33/99-CE dt.08.07.99 and the said applicant is liable to pay back the entire amount if so demanded under the Central Excise laws.

I order accordingly. The Mark April Strate Care

ASSISTANT COMMISSIONER CENTRAL EXCISE: DIBRUGARH

C.NO.V(18)09 /Ref./ACD/2004-05/ 27/0

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Copy to M/s Chubwa Tea Estate, P.O. Chabua, Dist. Dibrugarh (Assam) for Information! The statement has a second suggestion

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CENTRAL EXCISE: DIBRUGARH

C.NO.V (18)09/REF/acd/2004-05/2701 117 was the state of the second transfer of the

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1. The Commissioner, Central Excise, Dibrugarh for information, with reference to the Hqrs. Office letter C.Nov(14) 19/PRE-AUDIT/DIB/2005/8670 Dated25-07-05 In this connection it may be mentioned that regarding the para no.1 of the said letter, reply has already been submitted vide this Office letter dated 29-06-05.

> Central Administrative Maurial केन्द्रीय प्रशासनिक न्यासालय 2 2 DEC 2009

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The point has no relevancy in this matter/case. However, after careful consideration of the case-record, I have already allowed the eligibility of the case M/s. Chubwa T.E. has increased their capacity in all sections and as per the Notification No.33/99-CE dt. 08/07/99, they are entitled to get the refund from the date of completion and manufacturing started after expansion of more than 25% of the installed capacity as on 24/12/97. Moreover, the Commissionerate Office has never raised objection about the eligibility of the same refund claim.

Regarding pre-audit, this office forwarded the file in original to the Audit Branch of the Hqrs. Office, Dibrugarh for pre-audit of the claims submitted by the assessee but returned the same on 27/06/2005. However, again we are sending the original file alongwith the remaining Six claims mentioned above for pre audit as per Board's letter F.No. 268/25/2002-CX.8 dt. 15/03/2002. Since more than 2 month have already passed from the eligibility order, the assessee is now claiming the interest for delaying the sanction of their refund vide their letter dt. 28/06/2005.

The Commissioner (Appeal), Customs & Central Excise, Guwahati in the ()/A/No.04/CE/(A)/GHY/2005 dt. 25/01/2005, held that the exemption notification is to be read in its true perspective and that it should be interpreted for the purpose for which that have been issued i.e. in the instant case, for promotion of investment in the backward states of N.E. region. Moreover, exemption is to be construed reasonably and rationally and not in the manner which deprives the benefit thereof.

In reply to the para no.2 of the said letter, since section IIB of Central Excise Act 1944 is not attracted in the Notification No.33/99-CE dt.08/07/99 as per CBEC Circular No.354/B/90/TRU (Part-II) dt. 06/10/99, as such, it is not proper to bring in the limitation by implication of other laws. This issue was confirmed in the Tribunal cases as reported in (2004(164) ELT-339 (T) and (2005(179) ELT-0429 (T), that authority under one law is not competent to go into obligation under other laws.

In the case of M/s. Shivdham Industries, reported at 2003(141)ELT-242, the

1) an exemption under the Notification No.33/99-CE dt. 08/07/99, is not automatically defeated if the refund is not filed within the period of seven days,

2) the refund claim, although submitted late, but monthly return submitted within the time limit as prescribed by the CBEC. In the instant case, time bar factor is not relevant in view of the Board's Circular vide F No. 354/B/90-TRU (Pt-II) dt Commissioner (Appeal), Central Excise and Customs, Guwahati, CESTAT/CEGAT and also accepted by the Commissioner, Central excise,

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Dibrugarh, in the recent case of M/s. Maud T.E., Dibrugarh and some other cases of Jorhat Division namely M/s. Duklingia T.E., M/s. Borholla T.E., M/s. Suntok T.E. during January 2005.

3) The Tribunal held that, the Notification No. 33/99-CE dt.08/07/99, do not require any particular manner in which the assessee has to file the statement of duty payment, as such, the RT-12 return (now ER-1) can also be taken as statement filed by the assessee before the Central Excise Authority within seven days of the next month. In the instant case, the assessee always submitted the said return within the time as reported by the Superintendent, Central Excise, Dibrugarh III Range

Requirement of submission of statement on duty paid from the account-current are procedural requirement and substantial benefit cannot be denied for non-observance of such procedural requirement.

In the above account, in my opinion, there is merit of the case and the assessee is eligible to get the benefit of exemption and accordingly eligibility order has already been issued on 10-05-05. Recently, this Office received a letter from the Commissionerate Office Dibrugarh to finalise a case of refund of identical nature in respect of M/s. Maud T.E. within seven days, as accepted by the Commissioner(Appeal), Customs & Central Excise, Guwahati.

In the last para of the said letter, this Office has been instructed to pass an order on merit, Keeping in view the principle of natural justice. Accordingly, I sanctioned all the monthly claims up to Rs five lakhs and the rest Six monthly claims of above Rs 5 lakhs each are kept in abeyance for pre-audit clearance, which are being sent to the Audit Branch, Dibrugarh Central Excise Commissionerate as per Board's letter F.NO.268/25/2002-CE.8 dated 15-03-02 the transfer of the transfer of the second

- mail mouth in the property of the loss of the 2. The Joint Commissioner (Audit), Central Excise, Dibrugarh, along with relevant copies of PLA/TR-6 Challans for post audit and six nos claims of above Rs 5 lakhs each for pre-audit. 4) a politica de la como en la co
- 3. The Superintendent, Central Excise, Dibrugarh Range III, Dibrugarh
- of such proportional race of more 4. The Cashier, Central Excise, Dibrugarh with a request to issue a cheque amounting to Rs, 77,52,409,00 (Rupees seventy seven lakhs fifty two thousand four hundred nine only in fayour of M/s. Chubwa T.E., RO. Chabya, Dist. Halde Jed Dibrugarh (Assam)

ASSISTANT COMMISSIONER CENTRAL EXCISE: DIBRUGARH.

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FROM :TATA TEA LTD

FAX NO :91 33 22811495

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No 2/4(A)/2006-GWH/828

Govt. of India
Central Bureau of Investigation
O/o the Supdt. of Police
CBI: ACB: Guwahati Brach
Near Down Town Hospital
G.S.Road, Guwahati.

Central Administrative Mounal केन्द्रीय प्रशासिक न्यायालय

2 2 DEC 2009

Guwahati Bench गुलाहाटी न्यायपीड

Date: 09/02/2007

To,

The Sr. Manager, M/s Chubwa Tea Estate, PO-Chubwa, Dibrugarh, Assam,

Sub: Investigation of CBI case No.PE-4(A)/2006-GWH against Sh.H.R.Saha, the then Assistant Commissioner, Dibrugarh.

Sir.

The above noted case was registered at CBI: ACB: Guwahati Branch against Sh.H.R.Saha, the then Assistant Commissioner, Dibrugarh for the alleged fraudulent refund granted by him to your Tea Estate for Rs.77,52,409.00 for the period from 8.7.99 to 28.02.2003, out of the total refund claim of Rs.1,10,61,418.00 under Notification No.33/99-CE dtd.8.7.1999 on the ground that your Tea Estate had undertaken expansion in the installed capacity by 38 %. In this connection, the following documents are required to be collected in original:

- Invoices / Challans for procurement of new plants and machineries during the post expansion period.
- 2 Records showing date of installation of the new plants and mchineries.
- Paid Bills to different suppliers / contractors towards supply of new plants and machineries and for installation of the same alongwith counterfoil of the payment cheques.
- 4. Relevant records showing removal / dismantling of the old plants and machineries, if any.
- 4. Relevant roords showing pre-expansion capacity and post-expansion capacity.
- 5. Machineries Lay Out of plans duly approved by the competent authority.

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- 6. Statement of the Bank Account of your Tea Estate w.e.f. 01.08.2005 to
- 7 Any other relevant documents to substantiate your refund claims.

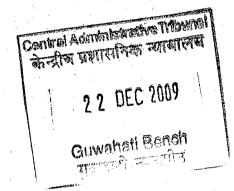
It therefore requested to produce the aforesaid documents to the undersigned at CBI: ACB: Guwahati Branch on or before 19.02.2007 (Monday).

Your co-operation is highly solicited.

Yours faithfully,

Sd/-9.2.07 (Ng Khamrang) Inspector

CBI : ACB : Guwahati.



Jia The Commissioner

JUL 2009

Central Exclse Dibrugarh

GÓVT. OF INDIA

OFFICE OF THE ASSISTANT COMMISSIONER

CENTRAL EXCISE & SERVICE TAX - DIGBOI DIVISION

10C (AOD) NEW MARKET, P.O. DIGBOI, DIST TINSUKIA, PIN 786171 (ASSAM)

TEL. NO - 03751 - 264995, 269256, 264427, FAX - 03751- 264738, EDECS-cexd7402

TUROUGH SPECIAL MESSENGER. C.NO.V(16)24/RTI ACT/CE/DIG/2006/

To

The CPIO/Assistant Commissioner, Central Excise, Dibrugarh.

Sub: Information sought under the RTI Act, 2005 by Sumita Gupta.

Please refer to your endorsement under C.No. IV(16)32/RTI/TECH/ COMMR/ DIB/09/3508-11 dated 17-06-2009 on the above subject.

In this regard, I am directed to inform you that this Division has been sending refund claims involving an amount of Rs. 5 Lakhs or more under Notification No. 32/99-CE and 33/99-CE both dated 8-7-99 for pre audit at the Hqrs. Officer in pursuance of guidelines issued by the following authorities of Shillong Zone:

- The Additional Commissioner (Audit), Central Excise, Chief Commissioner's 1. Office, Shillong vide his letter C.No. IV(16)124/CCO/SH/2004/22534-35 dated 11-07-2006.
- The Joint Commissioner, Central Excise, Dibrugarh vide letter under C.No. II(39)9/Audit/Misc/Dib/05/11314-17 dated 06-12-2006.

From this office record, it is found that prior to issue of the above guidelines no refund claim under above Notifications were sent for pre audit at Hqrs. Office.

Factory-wise details of refund claim sanctioned during the period from 07/99 to 03/2006 are furnished herewith in the enclosed sheet as per Annexure-"1".

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Guwahati Bench गुवाहाटी न्यायपीछ

(S.J. BEGU Superintendent (Tech-1)

ANNEXURE-1

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SI. No.	Refund claim filed on	Amount of Refund Claim	Name of the party	
· 1	2	3	4	
01	4-3-03	6,27,155.00	M/s. Classic Tea Co. (P) Ltd Rupaisiding	
02	7-11-04	12,59,682.00	M/s. Aurora Packers (P) Ltd., Doom Dooma.	
03	7-2-03	98,223.00	M/s. M.K.B. (Asia) (P) Ltd. Bormajan.	
. 04	18-1-04	15,808.00	M/s. Bordubi T.E., Doom Dooma.	
05	02-02-2000	37,088.00	-do-	
06	25-9-02	92,252.00.00	M/s. Koomsong T.E., Doom Dooma.	
. 07	02-01-03	31,88,692.00		much Gvitarisinaha karin
08	5-04-04	3,87,72,773.00	M/s. Hindustan Lever Ltd., Doom Dooma.	न्द्रीय प्रशासिक न्यामालय 1 2 2 DEC 2009
09	5-4-04	3,63,949.00	M/s. Aurora Packers (P) Ltd., Doom Dooma.	Guwahati Bench गुवाहाटी ऱ्यायपीठ
10	21-12-02	2,20,815.00	M/s. Powai T.E., Powai.	्रापाहाल जापपाठ
11	02-02-04	86,401.00	M/s. Baghjan T.E. Doom Dooma.	
12	7-2-03	5,500.00	M/s. Raidang T.F. Doom Dooma.	
13	2-2-03	5,500.00	-do-	
14	2-2-03	2,360.00	M/s. Phillobari T.E., Doom Dooma	

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1	2	3	4	<u> </u>
15	28-2-03	10,000.00	M/s. Beesakopie T.E., Doom Dooma	
16	1-7-03.	15,000.00	-do-	
1.7	. 5-2-02	12,500.00	M/s. Samdang T.E., Doom Dooma	
18	01-02-02	5,069.00	M/s. Margherita T.E., Margherita	
19	25-3-95	1,15,306.00	M/s. Sankar T.E., Saikhowaghat	
20	05-02-02	+ 13,200.00	M/s. Bogapani T.E., Digboi.	
15	28-2-03	10,000.00	M/s. Beesakopie T.E., Doom Dooma	
16	1-7-03	15,000.00	-do-	
21.	02-03-03	21,180.00	M/s. Bordubi T.E., Doom Dooma.	
22.	- 05-02-04	3,300.00	M/s. Koomsong T.E., Doom Dooma.	
23	02-01-03	3,25,698.00	M/s. Sankar T.E. Saikhowaghat	
24	04-02-03	14,214.00	M/s. Koomsong T.E., Doom Dooma.	
25	18-11-04	35,080.00	M/s. Koomsong T.E. Doom Dooma.	Administrative Tribunet
26	8-12-03	16,640.00	M/s. Koomsong T.E. Doom Dooma	प्रशासिक न्याबालस
. 27	05-02-04	12,240.00	M/s. Koomsong T.E. Doom Dooma.	° ? DEC 2009
	22-01-04	2,880,00	JOOUTI JOOTIIA.	uwahati Bench
29	22-01-04	4,800.00	M/s. Koomsong T.E. Doom Dooma.	A STATE OF THE PROPERTY OF THE
30	09-06-04	9,280.00	M/s. Namdang T.E., Margherita.	e e e e e e e e e e e e e e e e e e e
33	08-06-06	34,400.00	M/s. Dehing T.E. Margherita	
34	05-05-04	1,04,220.00	M/s. Dirok T.E., Margherita	· .
35	26-05-04	91,020.00	M/s. Namdang T.E., Margherita.	

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. 1	2	3	4	
36	24-04-04	94,860.00	M/s. Bogapani T.E., Digboi.	
37	•01-06-04	99,400.00	M/s. Namdang T.E.; Margherita.	
36	24-04-04	94,860.00	• M/s. Bogapani T.E., Digboi.	
37	. 01-06-04	99,400.00	M/s. Namdang T.E., Margherita.	
36	24-04-04	94,860.00	M/s. Bogapani T.E., Digboi.	
37	01-06-04	99,400.00	M/s. Namdang T.E., Margherita.	
36	24-04-04	94,860.00	M/s. Bogapani T.E., Digboi.	
37	01-06-04	99,400.00	M/s. Namdang T.E., Margherita.	
36	24-04-04	94,860.00	M/s. Bogapani T.E., Digboi.	Gentral Adeministrativa Titoura —केन्द्रीच प्रशासनिक न्याबालय
37	01-06-04	99,400.00	M/s. Namdang T.E., Margherita.	2 2 DEC 2009
38	01-06-04	1,49,050.00	M/s. Namdang T.E. Margherita.	
39	12-03-03	1,11,320.00	M/s. Namdang T.E. Margherita.	Guwahali Bosch
40	26-4-04	24,600.00	. M/s. Bogapani T.E. Digbo.	
41	12-4-04	54,360.00	M/s. Bogapani T.E. Digbo.	
42	02-02-03	25,440.00	M/s. Bogapani T.E. Digbo.	
43	12-4-04	1,37,080.00	M/s. Bogapani T.E. Digbo.	
44	12-4-04	36,080.00	M/s. Bogapani T.E. Digbo.	
45	10-06-04	2,17,130.00	M/s. Margherita T.E., Margherita	
	4-3-03	1,59,896.00	M/s. Classic Tea Co. (P) Ltd., Rupaisidin	g
46	31-12-02	18,604.00	M/s. Dirok T.E., Margherita	
. 4.7	11-12-04	.1	Andrew year of the party of the	

		<u> </u>			• •
	. 1	2	3	4 4	
	48	10-09-04	* 8,420.00	M/s. Dehing T.E. Margherita	
,	49	01-02-05	40,640.00	M/s. Dehing T.E. Margherita	
	50	12-1-05	72,140.00	M/s. Dehing T.E. Margherita	
	51	20-5-04	2,81,720.00	M/s. Dirok T.E., Margherita	
	52.	- 6-6-03	76,24700	M/S. Budlabeta T.E., Doom dooma	4
	53	25-2-05	1,19,240.00	M/s. Bogapani T.E. Digbo.	
	54	03-02-05	3,6380.00	M/s. Namdang T.E. Margherita.	
	_55	13-01-05	86,810.00	M/s. Namdang T.E. Margherita.	ival Administrative Tribunal
	56	10-6-04	7,720.00	M/s. Bogapani T.E. Digbo.	न्त्रीय प्रशासिक न्यायालय
	5.7	12-05-05	2,29,516.00	. M/s. Bhawani Tea Industries . Dhola.	2 2 DEC 2009
	58	3-9-04	94,216.00	M/s. Koomsong T.E. Doom Dooma	Guwahati Bench गुवाहाटी न्यायपीठ
	59.	7-1-05	1,21.956.00	· M/s. Mankhowa T.E., Doom Dooma	युवाहाटा न्यापना०
	60	8-5-05	49,001.00	M/s. PengreeT.E., Digboi.	
	61	8-12-05	13,800.00	M/s. Duamara T.E., Doom Dooma.	
	62	23-11-01	58,780.00	M/s. Tirap Veneer & Saw Mills, Miao.	
	63	22-03-05	1,91,980.00	M/s. Namdang T.E. Margherita.	•
1	64	04-02-04	77,344.00	M/s. Bogapani T.E. Digbo	
; i	65	22-03-05	31,54,904.00	M/s. Bogapani T.E. Digbo	
-	66	04-04-05	83,320.000	M/s. Sea Gulls Tea Co., Doom Dooma.	
	67	12-04-05	1,01,160.00	M/s. Dehing T.E. Margherita	
	68	02-07-07	1.73,14,244.00	M/s. Tirap Veneer & Saw Mills, Miao.	
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١	1	• 2	3	4
ľ				M/s. Shree Shyam Tea (P) Ltd. Doom Dooma.
l	69	04-04-05	29,160.00	
ļ				· M/s. Green Field Tea Co., Digboi.
W	~~70.	29-9-04	13,70,889.00	
				M/s. Lekhapani Tea Co.
V	71.	29-9-04	16,70,909.00	Lekhapani
•				M/s. Jagunbari Tea Co., Jagun.
	72 . !	29-9-04	62,360.00	
	/	!		M/s. Hamukjan Tea Co., Ledo.
1	73	21-04-04	9,05,947.00	

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Central Administrative केन्द्रीय प्रशासिक न्यायालय 2.2 DEC 2009 Guwahati Bench गुवाहाटी न्यागपीठ

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A wnexue

GOVT. OF INDIA

OFFICE OF THE DEPUTY COMMISSIONER CENTRAL EXCISE DIVISION::JORHAT

Station Godown Road, Jorhat 785001

Phone/Fax: 0376 2320006 E-mail:div7403 & cenexjor@sancharnet.in

Cantral Addition to antive Tribume! केन्द्रीष प्रशासनिक न्याबालग

Guwahati Bench

Place: Jorhat

M/s Kakajan T.E., P.O. Mariani, Dist. Jorhat, Assam, holder of Central Excise Registration No. AABCT0602KXM011 (Hereinaster called as 'the said applicant'), an unit registered with the Central Excise Department to manufacture 'Tea including Tea Waste' falling under Central Excise Tariff sub-heading No. 0902.00 of the Central Excise Tariff 1985. The said applicant has submitted refund claims of duty covering the period from 08.07.1999 to 28.02.2003 for the total amount of Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only paid through their PLA No. SH/103 with this Office in terms of the Notification No. 33/99-CE dated 08 07,1999 (Details as per annexure).

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

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

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

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

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

The subject refund of Rs. 1,18,86,282.00 (Rupees one crore eighteen lakhs eighty six thousand two hundred eighty two) only is hereby sanctioned in terms of the Notification No. 33/99-CE dated 08.07. 1999 after verification of eligibility and payment particulars. Any excess/erroneously refunded amount will be demanded as provided under the Notification No. 33/99-CE dated 08.07-1999 and the said applicant is liable to pay back the entire amount if so demanded under the Central Excise Laws.

I order accordingly.

Central Administrative Tribund | 2 2 DEC 2009 (M.C. HAZARIKA)

Guwahati Bencipeputy Commissioner

Telester Commissioner

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

Dated: 3/11/05

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

(M.C. HAZARIKA)
DEPUTY COMMISSIONER

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

Dated: 3/11/05

Copy forwarded for information and necessary action to:

1. The Commissioner, Central Excise, Dibrugarh.

2. The Joint Commissioner (Audit), Central Excise, Dibrugarh along with copy of PLA, TR-6 and statement of duty paid for the period from 25.07.199 to 28.02.2003.

3. The Assistant Chief Accounts Officer, Central Excise, Dibrugarh.

(M.C. HAZARIKA) DEPUTY COMMISSIONER



OFFICE OF THE ASSISTANT COMMISSIONER CENTRAL EXCISE DIVISION

केन्द्रीस प्रशासिका न्यासालस

2 2 DEC 2009

Control Administrative Tripline

ORDER (No.13)

JORHAT

Guwahati Bench Dated : 20-04-05 हाटी न्यायपीत

M/s. Suntok Tea Estate, P.O. Nazira, Dist. Sivasagar, Assam holder of Central Excise Registration No. AABCH0479EXM002 to manufacture of Tea including tea waste under Sub heading No. 0902.00 of Central Excise Tariff, 1985 have submitted a refund claim under the Notification No.33/99-CE dated 8.7.99 for the period 8.7.99 to March/2003 as below:

	- 1	111111	Unutilized				,	Unutilized	
Perio	od	PLA	CENVAT	Refund	Per	iod	PLA	CENVAT	Refund
,,011		debit	balance	admissible			debit	balance	admissible
					Jan	2001	0	0	0
					Feb	2001	13430	0	13430
		:	4.5		Mar	2001	0	0	0.
					Apr	2001	0	0	0
		İ			May	2001	7306	12436	0
•		1			Jun	2001	0	0	0
8-31.7	99	80120	0	80120	Jul	2001	0	0	0
	1999	145238	,0	145238	Aug	2001	0	0	0
Sep	1999	140084	0	140084	Sep	2001	0	0	0
Oct	1999	122166	Ö	122166	Oct	2001	, 0	0	0
Nov	1999	111478	0	111478	Nov	2001	0	0	0
Dec	1999	24682	0	24682	Dec	2001	0	<u> </u>	0
	1	623768	0	623768			20736	12436	13430
Jan	2000	7027 F	O	2526	Jan	2002	0	0	0
Feb	2000	with the same of the same	0	1136	Feb	2002	0		0
Mar	2000		.0	2876	Mar	2002	. 0		0
Apr	2000		58374	119244	Apr	2002	0		0
May	2000		39070	.0	May	2002	0		. 0
Jun	2000	į.	58605	. 0	Jun	2002	0		24244
Jul	2000		60851	98073	Jul	2002	31314	0	31314
Aug	2000		53248	89066	Aug	2002	0		0
Sep	2000	7	55436	100398	Sep	2002	0		0
Oct	2000		58566	84610	Oct	2002	. 0		0
Nov	2000		0	0	Nov	2002	. 0		0
Dec	2000		0	. 0	Dec	2002	0		0
	- 1	852295	384150	497929			31314		31314
	1				Jan	2003	68545		68545
					Feb	2003	803		_
e	ļ				Mar	2003	0		00545
							69348		
	ł				T	TAL	1528113	396586	1166441

The claim of refund were made against the increase in installed capacity not less than 25% which has commenced their commercial production after 24.12.97 in terms para3(a) of Notification 33/99 CE dated 8.7.99.

In pursuance of Notification No.65/2003 CE dated 06.08.2003 it is verified and found that they have debited Rs.15,28,113.00 towards BED in PLA and they have Rs.4,16,447.00 un-utilized Cenvat credit balance in RG23 A Pt-II against their clearances during the period. As such they are eligible to get an amount of (Rs.14,52,916.00 - Rs.2,86,475.00) = Rs.11,66,441.00 as refund for the above period.

On the basis of the above, order is here by passed for grant of above refund claims of Rs.11,66,441.00 provisionally to M/s. Suntok Tea Estate, P.O. Nazira, Dist. Sivasagar, Assam for the month(s) stated above.

Party may however, take note that should any objection or any doubt be raised as to their eligibility to the benefit of the Notification No. 33/99 CE dated 8.7.99, the amount of duty so refunded shall be liable to be adjusted by such amount as may be necessary in the subsequent refunds admissible to the manufacturers, under sub Para (C) of Para 2 of the Notification in question or wherever necessary under the provisions of section 11 A 0f Central Excise Act 1944.

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(K.B.BHUJEL)
ASSISTANT COMMISSIONER

Dated: 25/4/05

C.NO.V(18)28/ACJ/REF/MISC/2004/ 1611-13

Copy to:

1. M/s. Suntok Tea Estate, P.O. Nazira, Dist. Sivasagar, Assam.

2. The Deputy/Assistant Commissioner (Audit), Central Excise, Dibrugarh for information.

3. The Assistant Chief Accounts Officer, Central Excise, Dibrugarh.

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(K.B.BHUJEL)
ASSISTANT COMMISSIONER

Control Administrative Informal केन्द्रीय प्रशासिका सामालय

2 2 DEC 2009

Guwahati Bench