Central Administrative Tribunal
Principal Bench
New Delhi

OA No.1307/2013

Reserved on : 16.11.2018
Pronounced on : 04.12.2018

FULL BENCH

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. Pradeep Kumar, Member (A)

Pratap Singh,
J-37, Saket,
Delhi-17. … Applicant

(By Mr. Sachin Chauhan, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Finance, Government of India,
North Block, New Delhi.-110001.

2. Union Public Service Commission,
Sangha Lok Seva Ayog,
Dholpur House, Shahjahan Road,
New Delhi-110069.

3. Commissioner of Central Excise
Delhi-110002
C.R. Building, I.P. Estate,
New Delhi-110001. … Respondents

(By Mr. Rajeev Kumar, Advocate)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The applicant was an officer of the Indian Revenue Service. In the year 2002, he worked as Deputy Commissioner

of Central Excise, Divisions VI and VII, Delhi-II, between 03.09.2004 and 04.07.2005. In exercise of the powers conferred upon him, he granted registration to two new factories, namely, M/s Magpipe Overseas Co., Madanpur Khadar, New Delhi, and M/s Tirupati Udyog, Okhla Delhi, for manufacture of soap, without the aid of power. The raw material for that is palm oil (non-edible grade), which was to be imported from other countries. The notification dated 01.03.2002 provided for concessional rate of customs duty of 20% *ad valorem* on the imported palm oil, as against the normal duty of 65%. The applicant granted permits for import of huge quantities of palm oil by the two factories, during the said period. Subsequent inquiries revealed that the so called factories did not have any manufacturing units, and the quantities of palm oil imported in the name of the factories, were diverted to other uses, causing loss to the revenue, to the extent of several crores of Rupees.

2. The applicant retired from service in the year 2006. The appointing authority intended to initiate disciplinary proceedings against him. As required under rule 9(2) of the CCS (Pension) Rules, 1972, the President accorded sanction for initiation of departmental proceedings against the applicant. A charge memorandum dated 19.05.2006 was issued. The

applicant denied the charges by submitting explanation. He pleaded *inter alia* that in the proceedings initiated under Section 114 of the Customs Act, 1962 (for short, the Act), he was exonerated by the concerned authority, and that there was no justification for initiating disciplinary proceedings against him.

3. After conducting the departmental inquiry, the inquiry officer submitted his report, holding that charges 1, 2 and 4 are proved, and other charges are not proved. The report of the inquiry officer was accepted by the disciplinary authority. After obtaining the second stage advice from the Central Vigilance Commission, notice was issued to the applicant. On consideration of the entire matter, the disciplinary authority passed an order dated 07.02.2013 imposing the punishment of withholding of 10% of the monthly pension, for a period of five years. The applicant filed this OA challenging the charge memorandum dated 19.05.2006, the report of the inquiry officer, the order through which sanction for initiation of departmental proceedings was accorded, and the order of punishment.

4. The applicant contends that he granted licence to the two factories on the basis of the report submitted by the

ground staff, and that no illegality was committed by him. It is stated that permits for import were also granted on the files being put up by the subordinate staff. He further pleaded that in the proceedings initiated under Section 114 of the Act, the concerned authority has exonerated him of any lapses in discharge of duties, and in view of that finding, the departmental proceedings become untenable. Reliance is placed upon an order dated 07.08.2000 passed by this Tribunal in OA No.2862/1997 – ***R. D. Gupta v Union of India & others***.

5. The respondents filed a counter affidavit opposing the OA. It is stated that there was a clear negligence and lack of care on the part of the applicant when he granted – *(a)* licences to the two factories without even verifying as to whether any arrangements were made therein for manufacture of soap; and *(b)* permits, indiscriminately for import of palm oil at concessional duty. They also contend that the purpose and purport of the proceedings under Section 114 of the Act, are totally different from those in the departmental proceedings, and an order passed in such proceedings cannot constitute the basis to absolve an employee of the liability to be dealt with in the departmental inquiry.

6. A Division Bench of the Tribunal that heard this OA, expressed the view that no principle as such was laid down by any Court of law or the Tribunal, to the effect that the same result would entail of the proceedings initiated under Section 114 of the Act, on the one hand, and the disciplinary proceedings on the other hand, and the finding in one of the proceedings would have its effect on the other. Through a reasoned order dated 27.09.2018, it was felt that the matter deserves to be considered by a Full Bench. Accordingly, the Full Bench was constituted.

7. Shri Sachin Chauhan, learned counsel for the applicant argued at length, reiterating the various contentions advanced by the applicant in the OA. He submits that the proceedings under Section 114 of the Act were initiated as regards the very issue that was the subject matter of the disciplinary proceedings, and on a detailed consideration of the entire case, the authority, under that provision, held that the applicant is not guilty of any lapse or negligence. He contends that once a finding was recorded by such an authority, disciplinary proceedings become untenable, on the same set of allegations. Arguments are also advanced on merits of the OA.

8. Shri Rajeev Kumar, learned counsel for the respondents, on the other hand, submits that the proceedings under Section 114 of the Act are basically directed against the persons who evade the customs duty, and the occasion to rope in the officials of the Department is only in the context of examining whether there was any abetment or active connivance, leading to such evasion, and that by no stretch of imagination, those proceedings can be equated to, much less, be treated as substitute for the disciplinary proceedings. He further submits that the issue involved in such proceedings is the evasion of customs duty, whereas in the disciplinary proceedings, it is the determination of misconduct of the official, as defined under the CCS (CCA) Rules, 1965, and the concerned service rules.

9. In his capacity as Deputy Commissioner of Central Excise, the applicant was the 'licensing authority', for factories, which were supposed to manufacture soap without the aid of power. The registration so granted was to constitute the basis for import of palm oil at concessional rates by those two factories. Naturally, the applicant was expected to satisfy himself, firstly whether there existed any manufacturing unit, and secondly, whether the oil that was being imported, was

being utilized for that purpose. Another important aspect was to verify whether the manufacturing of soap, if undertaken, was with or without the aid of power. The reason is that the Government provided concessions only to encourage the cottage industries by reducing the customs duty.

10. On receiving intelligence, the team of officials searched the two factories registered by the applicant. The gist thereof is mentioned in paras 4 to 8 of the statement of imputation, which reads as under:

> "4. That working on intelligence, the factory premises of the firm were searched. The premises consisted solely of a small basement with an L shape of total area of 614 sq.ft. It was seen that only a few token items of manufacture of soap were present in the premises (two khadis 92 cm. X 183 cm. (dia), 66 cm x 137 cm. (dia); 70 iron frames; 2 burners). There was no storage tank for keeping oil; only 32 drums having capacity of hundred kgs. each were present. There was no chemical (caustic soda) which is essential for manufacture of soap. There was no exhaust fan and hence manufacture using the burners and chemicals in the basement was no possible. It was obvious that the firm did not have the capacity to store the quantities of crude palm oil imported by him; it did not have the machinery/equipment sufficient to handle the imported volume of oil. It was basically a device to deceive the Department."

In this respect, the following was also mentioned:

> "5. That Shri Saurabh Agarwal in his voluntary statement dated 19.09.2005 under Section 14 of the Central Excise Act to the officers of Anti-Evasion Unit admitted that he had not used the imported oil for manufacturing soap but had diverted the same to the open market.
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> 6. That, thus the total quantity of crude oil imported by M/s Tirupati Udyog was 1485.412 MT of valud Rs.2.85 crores (approx.) and the revenue loss was Rs.1.31 crores (approx.).
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> 7. That similarly, said Shri Pratap Singh issued registration on 16.03.2006 for the import of crude palm oil to M/s Magpipe Overseas Company, B-70, Main road, Madanpur Khadar, New Delhi. This is also a proprietorship concern of the same Shri Saurabh Agarwal. The premises of this concern comprised of two rooms 15' x 20' and 15' x 10'. One room was empty. There was one khadi outside the other room. The room had 22 drums each having capacity of 100 kgs. There was one burner with some cylinders. There was no storage tank. There was no caustic soda chemical. The same modus operandi as outlines in the case of M/s Tirupati Udyog was followed. Shri Pratap Singh accepted bonds (As per list enclosed) in respect of this unit also.
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> 8. That the total quantity of crude oil imported by M/s Magpipe Overseas was 8714.18 MT of value Rs.16.19 crores which was diverted and the revenue loss was Rs.7.43 crores."

Thus, the total loss to the State on account of the illegal imports by the two factories for the period in question aggregated to Rs.8.74 (1.31+7.43) crores. In view of this, the charge memorandum was issued, duly obtaining the sanction from the President of India, as required under rule 9(2) of the CCS

(Pension) Rules, 1972. As many as six articles of charge were framed. The gist of the alleged misconduct is contained in the first two articles, which read:

> "ARTICLE-I
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> The said Shri Pratap Singh, retired Deputy Commissioner, while posted as Deputy Commissioner of Central Excise Division VI & VII Delhi-II Commissionerate during 03.09.04 to 04.07.05 failed to take steps to get verified storing/processing/manufacturing capacity of the new factories namely M/S Magpipe Overseas Co. B-70, Madanpur Khadar, New Delhi and M/s Tirupati Ugyog, C-43, Okhla, Phase-I, New Delhi for which Registration was granted for the first time by him. Also he did not call for or examine project reports or feasibility study of the said units vis-a-vis their manufacturing capacity as compared to the huge quantity of Palm Oil sought to be procured as concessional rate of customs duty for manufacture of soap in terms of Notification No.21/2002-Cus. dated 01.03.2002. The failures, apart from constituting serious lapses on the part of said Shri Pratap Singh, facilitated the fraudulent evasion of duty by the said firms leading to a loss of Rs.3.24 crores (Approx.). These serious lapses depict a conduct lacking in integrity and devotion to duty and unbecoming of a Government Servant on the part of said Shri Pratap Singh and he, thus contravened the provisions of Rule 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.
>
> ARTICLE-II
>
> The said Shri Pratap Singh, retired Deputy Commissioner, while posted as Deputy Commissioner of Central Excise Division VI & VII, Delhi Commissionerate during 03.09.04 to 04.07.05, while accepting the Bond for import of

> such huge quantities of palm oil in respect of the units namely M/s Magpipe Overseas Co. and M/s Tirupati Udyog and while issuing Procurement certificate letters for huge quantities of the oil, conducted no enquiries with respect to the fact that whether the said units were actually capable/equipped to use such large quantities of palm oil. He did not check regarding the manufacturing facilities to handle such a large volume of oil. He did not check regarding storage arrangements for such large quantities of oil in the declared manufacturing premises of said units. These factories, apart from constituting serious lapses on the part of said Shri Pratap Singh, facilitated fraudulent evasion of duty by the said firms. These serious lapses depict a conduct lacking in integrity and devotion to duty and unbecoming of a Government servant on the part of said Shri Pratap Singh and he, thus contravened provisions of Rule 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964."

11. In his report, the inquiry officer held charges 1, 2 and 4 as proved, and others as not. After giving an opportunity to the applicant to submit representation, and on a consideration of the entire record, the disciplinary authority obtained the views of CVC, and imposed the punishment of 10% cut in the monthly pension for a period of five years.

12. The principal ground urged before us is that the proceedings under Section 114 of the Act were initiated against the licensees, as well as the applicant and others, and through its order dated 06.11.2007, the competent authority, i.e.,

Commissioner of Central Excise, Delhi-II, exonerated the applicant of any involvement, or negligence, and in that view of the matter, the disciplinary proceedings become untenable.

13. It is not uncommon that a set of allegations against an employee would lead to initiation of proceedings in various fronts. If the acts and omissions on the part of an employee constitute the offence as defined under any enactment, the concerned Prosecuting Agency can institute the proceedings, before a competent Court of law. Simultaneously, the Disciplinary Authority can initiate proceedings against that employee on the same set of allegations. Law does not prohibit such an exercise. The reason stated therefor is that the consequences that entail these proceedings are totally different. Further, the standard of proof that is required to prove the allegations in a criminal case, on the one hand, and the departmental proceedings, on the other, are totally different.

14. In a criminal case, the wrong is treated as having been committed against the society, and on proof of it, the accused is convicted, and sentence is imposed. In disciplinary proceedings, on the other hand, the wrongful act is treated as an act of misconduct, as defined under the relevant service

rules. Coming to the standard of proof, in a criminal case, the prosecution is under an obligation to prove the charge and the allegations contained in it, to the satisfaction of the Court beyond any pale of doubt. However, it would be sufficient in the departmental proceedings if there is a preponderance of evidence in support of the allegations contained in the charge memorandum. The Courts consistently held that even if an employee is acquitted in the criminal case, he can be punished by the department in case the same set of facts constitutes misconduct. The only exception that is carved out, is when the basis of the allegation in the criminal case and in the departmental proceedings is identical, and same evidence is relied on, in both the proceedings.

15. In its judgment in ***Capt. M. Paul Anthony v Bharat Gold Mines Ltd. & another*** [(1999) 3 SCC 679], the Hon'ble Supreme Court reviewed the entire case law on the issue. The point that arose for consideration was mentioned as under:

> "13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little

> exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

Most of the precedents that were referred to therein were on the question as to whether the criminal proceedings, on the one hand, and the departmental proceedings, on the other hand, can be carried out simultaneously. The gist thereof was summed up by the Supreme Court as under:

> "22. The conclusions which are deducible from various decisions of this Court referred to above are:
>
> > (*i*) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

> (*ii*) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
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> (*iii*) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
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> (*iv*) The factors mentioned at (*ii*) and (*iii*) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
>
> (*v*) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

It is necessary to mention herein that in ***Capt. M. Paul Anthony***'s case, the employee in that case was dismissed from service after he had been acquitted in the criminal case. The

order of dismissal was set aside by the Hon'ble Supreme Court on the ground that adequate opportunity was not given to him in the disciplinary proceedings. The fact that the same evidence was adduced in the criminal case, on the one hand, and the departmental proceedings on the other, was mentioned. However, it was not held that initiation of disciplinary proceedings was incompatible on the ground that criminal proceedings were initiated on the same set of allegations.

16. The case on hand, presents a typical, if not a unique, situation. The basis pleaded is that in the proceedings under Section 114 of the Customs Act against the licensees, who were said to have evaded the customs duty, notices were issued to the officers of the Department, including the applicant herein, and even while levying the customs duty and penalty on the importers, an observation was made by the competent authority that the applicant and other employees were not guilty of the allegations made against them.

17. In this context, it becomes necessary to have a glance at the relevant provisions of the Customs Act. Chapter XIV thereof, comprising of Sections 111 to 127, deals with

"Confiscation of goods and conveyances and imposition of penalties". Section 111 enlists the properties that can be confiscated, and Section 112 provides for levy of penalty for improper importation of goods. Section 113 provides for confiscation of goods which are improperly exported, etc. Section 114 provides for penalty for attempt to export goods improperly, etc., and it reads as under:

> "**114. Penalty for attempt to export goods improperly, etc**. - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable –
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> *(i)* in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act], whichever is the greater;
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> *(ii)* in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:
>
> Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty,

> the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;
>
> *(iii)* in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

In the ordinary course of things, the officials of the department do not figure as persons liable to be punished or prosecuted under this Chapter. However, Section 114, which deals with attempts to export goods improperly, any employee who abets that, would also be liable to be proceeded. This is evident from the reading of the section itself. The penalty to be imposed on proof of such abetment is provided under clauses *(i)*, *(ii)* and *(iii)* extracted above. By its very nature, the 'wrong' is as regards the export of goods, and the role of an employee is only about abetment. Even where abetment is proved, the maximum that can occur to him is the levy of penalty, as indicated therein.

18. In a given case, an employee or officer of the Department may have actively connived with an exporter or importer for evasion of customs duty running into hundreds of crores. The maximum that can happen to him is levy of some

penalty, without having any reflection upon his service. In contrast, the consequences that entail in a criminal case instituted against an employee are different. If he is convicted of an offence, that by itself would become the basis for imposing the punishment of dismissal from service. When the criminal proceedings, whose end result would have a direct bearing upon the service of an employee, is not treated as a hurdle or impediment for initiation of disciplinary proceedings, or for that matter, imposition of penalty, it is just un-understandable as to how the mere fact that the officer was issued notice under Section 114 of the Act, and an observation was made that he did not abet the evasion of duty, can absolve him of the negligence of duty or misconduct, if otherwise established.

19. In ***R. D. Gupta***'s case (*supra*), the Tribunal dealt with this aspect in paras 4 and 5 of its order, as under:

> "4. Having given careful consideration to the above contentions, we find sufficient force in the contentions of the learned counsel for the applicant. Initially, the applicant was sought to be punished under Section 114(iii) of the Customs Act. The allegation was that he misdeclared the quantity and value of ball point pens to claim a drawback amounting to Rs.4,61,962.96, which was not actually due, as the

quantity and value of the pens was found to be much less than declared. The Commissioner, on enquiry, however, found as under:-

> "I also find that the view taken by the Department that on verification of 36 shipping bills in respect of which the exports had already taken place in the name of M/s Enkay Exports, it was observed that in all these cases the goods had been examined by Shri R.D. Gupta, Inspector. Moreover, in all these cases though the goods were not available for verification, iot was observed that on the basis of declared weight and quantity of the pens and the average weight per pen worked out to between 0.71 gms. to 2.98 gms., which showed that Shri R.D. Gupta, permitted export of which consignment wherein the declared quantity appeared to be much larger than the actual quantity, is incorrect in as much as it is a fact that the value and quality of a pen will not be depend upon its weight as an inferior pen can be of more weight than a superior pen and vice versa. The observation of the Department appears to be based on presumption and assumption and no other corroborated evidence has been adduced by the Department to this effect.
>
> From the foregoing discussions, I find that charges against Shri R.D Gupta, does not stand proved. There is no evidence to suggest that he had connived or abetted with M/s Enkay Exports in their attempt to claim fraudulent drawback against the said shipping bills."

This shows that the applicant was not blameworthy or remiss at all. This order has become final. The Board of Customs also accepted this. The present charge sheet is again

issued containing the same allegations. Admittedly, the allegations are the same. No doubt, it is true, he was charged for violating the Conduct Rules. The Commissioner, having considered the entire evidence, both oral and documentary, found that there was no evidence, whatsoever, against the applicant and accordingly exonerated. It is seen that the witnesses as well as the documentary evidence in the present case are the same, as in the previous enquiry. When once it was found by the competent authority that the charges were not established, in our view, considering the allegations and findings in this case, it is not open to the department to proceed once more afresh for the violation of same allegations, on the same evidence. If it is a case where a misconduct, on a different set of facts and evidence was sought to be established, then a fresh charge may be laid. As stated supra in this enquiry, the case is sought to be proved on the same evidence, orally and documentary. In view of the above, we hold that the impugned chargesheet and proper enquiry as illegal; the charge sheet and all further proceedings taken in pursuance of the charge sheet are quashed.

5. From the available facts, it is also clear that though the applicant has been exonerated on 29-08-97 and the order of the Commissioner has been accepted by the Board of Customs, the order of suspension was revoked only in 9-11-98. It was, however, stated in the reply, that he was kept under suspension in view of the fact that the proceedings against him were still pending, which is an incorrect statement. This counter was filed on 27-02-98, whereas the applicant had been exonerated on 29-09-97. Thus we find that

> the applicant was continued under suspension even after he was exonerated, which is illegal. We, therefore, direct that the order of suspension should be deemed to have been revoked w.e.f. 29-08-97, and the applicant is entitled for promotion, if found fit in accordance with the Rules. The respondents are, therefore, directed to consider the case of the applicant for promotion, if found it.
>
> OA is allowed accordingly with the consequential benefits."

Neither at that time, nor as of now, there existed any precedent from the Supreme Court or the High Courts on this issue. For all practical purposes, it was a maiden attempt by the Tribunal to equate the proceedings under Section 114 of the Customs Act, with the disciplinary proceedings under the CCS (CCA) Rules.

20. It has already been mentioned that the end results of these proceedings are totally different. In addition to that, the actual target or the subject matter of the proceedings under Chapter XIV of the Act is the goods that are liable to be confiscated, and naturally, it is the exporters or importers, who resorted to such act, are held liable to pay the differential duty or penalty. The rare occasion to issue notices to the officers of the Department is in the context of abetment. Another way of

looking at the issue is that the proceedings under Section 114 of the Act would not become incomplete or untenable in the event the officials not being roped in them.

21. In the present case itself, the proceedings were initiated in the year 2007, mainly against M/s Tirupati Udyog, Okhla, New Delhi. The preamble of the order reads:

> "This order has arisen out of Show Cause Notice C. No.IV(Hqrs. Prev) INT/29/05/AE/Del-II/672-677 dated 17.05.2006 issued by the Commissioner of Central Excise, Delhi-II, Central Revenue Building, I.P. Estate, New Delhi against M/s Tirupati Udyog, New Delhi and jurisdictional officers of Central Excise, Delhi-II."

The context in which the show cause notice was issued to the applicant also, was mentioned in para 13.10 of the said order. It reads as under:

> "13.10 Shri Pratap Singh, Retired Deputy Commissioner, while posted as Deputy Commissioner of Central Excise, Div-VI and Div-VII, Delhi-II Commissionerate during the period 03.09.2004 to 04.07.2005 granted registration to Tirupati under Rule 9 of Central Excise Rules, 2002 and Rule 3 of CUSTOMS (IMPORT OF GOODS AS CONCESSIONAL RATE OF DUTY FOR MANUFACTURE OF ESCISABLE GOODS) RULES, 1996. Ultimately it turned out to be a preplanned fraud on the part of the owner of the said firm and gross negligence on part of Sh. Pratap Singh, the then Deputy Commissioner, that enables the firm in evasion of duty. Sh. Pratap Singh failed to get verified the storing,

> processing and manufacturing capacity of the factory. He also did not call for or examine project reports of the said unit vis-à-vis its manufacturing capacity. Shh. Pratap Singh, while accepting the bond for import of such huge quantity of Crude Palm Oil (Non-edible Grade) in respect of the said unit, did not insist for security/Bank Guarantee. In all he accepted 3 bonds of Tirupati. Sh. Pratap Singh, while issuing procurement certificate letters for the oil did not conduct any enquiry with respect to whether the assessee was actually capable/equipped to use such large quantities of Crude Palm Oil (Non-edible Grade). Sh. Pratap Singh issued procurement certificates for a total quantity of 1500 MY Crude Palm Oil (Non-edible Grade) for Tirupati. As per records Sh. Pratap Singh issued the end-use certificate for a quantity of 500.000 MT of Crude Palm Oil (Non-edible Grade) in favour of Tirupati. He did not check whether the goods have entered the manufacturing premises. He did not conduct any inquiries/checks/verifications in respect of manufacture of soap and sale thereof under sale invoice etc."

The Commissioner of Central Excise has undertaken discussion in an order which runs into 99 closely typed pages. He not only held that the licensee therein, i.e., M/s Tirupati Udyog, was liable to pay the differential customs duty of Rs.1,31,10,263/-, but also the equivalent sum as penalty and interest thereon, as provided for under the Customs Act. Having said that, he observed as under in relation to the employees:

> "I do not impose any penalty upon Sh. Pratap Singh, Deputy Commissioner (now retired), Sh.

> S. C. Pushkarna, Deputy Commissioner, Sh. P. P. Joshi, Superintendent, Sh. G. R. Singh, Superintendent and Sh. Sanjay Dasila, Inspector under Section 112 (a) or Section 117 of the Customs Act, 1962. All these officers named above are exonerated from all the charges or allegations leveled against them under the impugned notice, since the charges or allegations have not been proved."

It needs to be mentioned that the allegation against the employees was one of abetment of evasion, but not of any acts of misconduct, as defined under the relevant service rules, or a criminal act. Hence, there was no occasion for him to deal with those aspects at all.

22. In the departmental proceedings, even if it is established that an employee did not abet the evasion of customs duty, he would become liable to be punished if the evasion was the result of any negligence or wrongful performance of the duties. In a given case, an officer may have honestly and sincerely held a particular view as regards the duty payable on the goods or the value thereof. Despite that, if such a view becomes untenable in law, and leads to financial or other loss to the Government, it would expose him to punishment.

23. If the plea of the applicant that the exoneration of a departmental official in the proceedings under Section 114 would provide a protective cover against the disciplinary proceedings, is accepted, the easiest thing for a corrupt officer would be to make huge money by granting licenses or import permits, contrary to law, and when the wrong is noticed, to get initiated proceedings under Section 114, and thereby come out clean. Here itself it needs to be mentioned that the scope of the proceedings under Section 114 of the Act in relation to departmental officials is fairly restricted and limited. It is only when the 'active connivance' is proved that the occasion may arise for imposition of penalty, and not otherwise. An order of the ITAT in ***Commissioner of Customs, Delhi v Hargovind Export*** [2003 (158) ELT 496 (Tri.-Del)] was referred to in the order dated 06.11.2007. Relevant portion thereof reads as under:

> "The Commissioner, under the impugned order, after examining the evidences brought on record and referring to various statements came to the conclusion that the entire conduct of these Respondents would throw a serious doubt about discharging their duty properly but it is not sufficient to penalize them under Section 114 of the Customs Act. **The Commissioner has given his findings that there is no evidence on record to show that any act or omission on the part of the Respondents has rendered the goods liable**

> **to confiscate under Section 113 of the Customs Act** (emphasis supplied)". In the appeal filed by the Revenue, it has not been highlighted that there is any material to show that the Respondents had connived with the exporter in misdeclaring the goods. **What has been mentioned in the Memorandum of Appeal, filed by the Revenue, only highlights the dereliction of duty by the Respondents which is not sufficient for imposing penalty under Section 114 of the Customs Act** (emphasis supplied)."

The understanding of the Commissioner of Central Excise of the real purport thereof is reflected in the next paragraph, which reads as under:

> "Thus, for the purpose of imposing penalty particularly under clause (a) of this section, 'any person' who, in relation to any goods, does or omits to do any act, renders the goods liable to confiscation only includes a proprietorship firm and proprietor thereof; a partnership firm and partner(s) thereof; a private limited or a public limited company and director(s), manager(s), secretary or other officer or officers thereof."

It was also mentioned that for the purpose of imposition of penalty, any person other than the proprietor or manufacturer, should be one who abets the doing of an act which makes the goods liable for confiscation, and mere dereliction of duty by an officer is not sufficient for imposition of penalty. In other words, dereliction on the part of an officer, even if established, cannot constitute the basis for imposition of penalty. In

contrast, the dereliction would certainly entail punishment under the CCS (CCA) Rules. When such is the diverse nature of the consequences, it is very difficult to hold that the observations made in the proceedings initiated under Section 114 of the Act in relation to an officer would render the initiation of the departmental proceedings impermissible. Though it is stated that an SLP was filed against the order in ***R. D. Gupta***'s case, it was dismissed on the grounds of limitation, and no adjudication was handed out on merits. We hold that the view taken by the Division Bench of this Tribunal in ***R. D. Gupta***'s case does not represent the correct position of law.

24. On merits, we find that the applicant failed to exhibit diligence both when he granted licences and when he granted import permits. The findings of the inspecting team are indeed startling. The licensing authority is required to satisfy itself as to the compliance with the conditions and existence of the necessary infrastructure, etc. The inspecting team found that there were not even traces of a factory, but the licence was granted. That only shows the nature of 'satisfaction' on the basis of which the applicant granted licence and import permits. Phenomenal quantities of palm oil at concessional duty were imported. Even if there was no

collusion on the part of the applicant, his gross negligence leading to loss of crores of Rupees to the State is sufficient to prove his misconduct. The disciplinary authority has followed the prescribed procedure, arrived at proper conclusion, and imposed the punishment, which cannot be said to be disproportionate.

25. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.

(Pradeep Kumar) (Nita Chowdhury) (Justice L. Narasimha Reddy)
Member (A) Member (A) Chairman

/as/