CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.980 of 2015

Orders reserved on : 09.08.2018

Orders pronounced on : 16.08.2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

O.P. Bhola
Aged 67 years
S/o S.R. Bhola,
r/o 1859, Outram Line,
Kingsway Camp, Delhi-110009.

....Applicant

(By Advocate : Shri Piyush Kumar)

VERSUS

1. Union of India
   Through Secretary (Revenue),
   Ministry of Revenue,
   North Block, New Delhi.

2. Commissioner of Central Excise,
   Delhi-II, C.R. Building,
   IP Estate, New Delhi-110002.

.....Respondents

(By Advocate : Shri Piyush Gaur)

O R D E R

Ms. Nita Chowdhury, Member (A):

The instant OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

"a) Set aside and quash the Order No.77/2014 dated 12.11.2014.

(b) Refund the amount already deducted by the Department from the Applicant's pension since

12.11.2014 till date along with interest computed at the rate of 18% p.a.

(c) Pass such other or further order(s) in the favor of the Applicant as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case and in the interest of justice."

2. Brief facts of the case, as enumerated in the OA, are that the applicant retired from the post of Superintendent, Customs and Central Excise Department on 30.9.2007.

2.1 In September, 2005, working on an intelligence tip-off, the Anti-Evasion Branch of the Central Excise Commissionerate, Delhi-II initiated an investigation against M/s Magpie Overseas Co. and M/s Tirupati Udyog for alleged diversion of palm oil imported for manufacture of soap to the open market and upon conclusion thereof, issued a Show Cause Notice dated 17.05.2006 wherein apart from the importer, the Department also indicated the present application without there being any lapse or misdemeanor on his part.

2.2 In due course, the then Commissioner of Central Excise, Delhi-II adjudicated the aforesaid Show Cause Notice and after conducting a methodical and exhaustive inquiry, honorably exonerated the applicant from all allegations and charges vide Order-in Original No.03/2007 dated 14.11.2007. Relevant findings of the learned Commissioner returned in the said Order-in-Original read as under:-

> *"They have recommended these certificates on the basis of the statutory records maintained and produced by the party. The physical verification of the consumption of the raw material is not at all required in the present law. It was required during the era of Physical Control. It is totally based on records and that too simplified records. Further, there is no mechanism of verification of the final products at Range level, especially when the goods are not industrial goods, which can be verified from the concerned Excise authorities having jurisdiction over the factory premises of the buyer. Under Self assessment scheme, the Range officials have to accept what the assessee declares. If there is any deviation in this regard, it is the duty of the investigating authorities posted in the Anti-Evasion Branch of Headquarter or Preventive Branch of the Division office to unearth the fact by investigation.... There is no such allegation of extraneous consideration in the show cause notice. Therefore, no action is warranted against the officials... the records of the case evince that the party has done the evasion of duty by suppressing the facts. Therefore, it is not just and proper to attribute the charges of "gross negligence" on the part of the departmental officials."*

Thus, finding nothing amiss with the conduct of the Applicant, the learned Commissioner held:

> *"I do not impose any penalty upon Sh. Pratap Singh, Deputy Commissioner (now retired), Sh. S.C. Pushkarna, Deputy Commissioner, Shri O.P. Bhola, Superintendent and Shri Bhuvneshwar Kumar, Inspector under Section 112 (a) or Section 117 of the Customs Act, 1962. I find that even the Show Cause Notice has not alleged any involvement of the officers in the evasion committed by the party. All these officers named above are exonerated from all the charges or allegations leveled against them under the impugned notice, since the charges or the allegations have not been proved."*

2.3 Order-in-Original dated 14.11.2017 passed by the learned Commissioner has since been accepted by the

Jurisdictional Committee of the Chief Commissioners and thus the findings therein have become final and binding on all concerned qua the applicant.

2.4 Even before the learned Commissioner could adjudicate the Show Cause Notice and just few months prior to the applicant's scheduled retirement, the department issued the impugned Memorandum based on the same facts and evidence leveled very same charges against the applicant as contained in the aforesaid show cause notice proposing penalty under Rule 14 of CCS (CCA) Rules vide Memorandum dated 11.6.2017 on the following Statement of Articles of Charages:-

> **"ARTICLE-I**
>
> The said Shri O.P. Bhola, while posted as Superintendent Range 28, Central Excise Division-VI of Delhi Commissionerate where M/s Magpie Overseas Co. B-370 Madanpur Khadar, New Delhi was registered, failed to look for project report or examine feasibility study of the said unit vis-à-vis its manufacturing capacity as compared to the huge quantity of Palm Oil sought by the unit to be procured at concessional rate of customs duty for manufacture of soap. He also failed to take steps to get verified storing/ proceeding/ manufacturing capacity of the factory.
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> **ARTICLE-II**
>
> That the said Shri O.P. Bhola, failed to physically verify receipt of the imported palm oil in the factory of M/s Magpie Overseas Co., B-370 Madanpur Khader, New Delhi which was required on his part, as per Circular No.46/96-Cus dated 30.8.96, G.O.I. M/O Finance, Deptt of Revenue, which states in Para 10 that
>
> "Once the intimation has been received, the Central Excise Officers may physically verify the receipt. While the importer-manufacturer has to inform the

Range Superintendent of the Receipt of the imported Goods within 2 days of the receipt (excluding holidays), occasional failure to do so in exactly 2 days should alone not be a cause of issuing show cause notices to the manufacturer. Once the intimation has been received, the Central Excise Officers may physically verify the receipt but only selectively. It may be borne in mind that in case there is a short receipt at the factory vis-à-vis the quantity/cleared under the Bill of Entry, necessary action to recover the duty should invariably be taken."

It was admitted by Sh. Saurabh Agarwal, the main person behind the two firms in his statements dt. 19.9.05 and 4.5.06 that the imported palm oil has been diverted to the open market under the guise of manufacture of soap. The statement of transporters also confirmed that goods were only brought near Delhi and then sent to Kanpur, Varanasi, etc. with a different set of documents.

ARTICLE III

While issuing consumption certificates, for an eventual issuance of end use certificate by Divisional Office for the manufacture of soap he did not conduct any inquiry/checks/verifications etc with a view to ascertain whether the imported goods have been used for manufacture of soap. No records of manufacture of soap were placed in Divisional records in token of verification. This lapse on his part caused loss to Government Revenue.

ARTICLE-IV

Shri O.P. Bhola, Superintendent failed to notice that the records of receipt of oil, issue of oil and manufacture of soap were not available in Range records when he issued consumption certificates and recommended for issuance of End-use certificates. He tool no steps to place such documentary evidence in file. There is no evidence that such records existed at the relevant time.

ARTICLE-V

Shri O.P. Bhola, Superintendent failed to notice that the records of manufacture, storage and disposal of the soap were not available in the Range records while recommending for issuance of End-use certificate. There is no evidence that such records existed at the relevant time.

ARTICLE-VI

The non submission of the monthly return by the party as prescribed under Rule 5 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules 2001 was not brought on record and action accordingly was not taken. This should have resulted in the booking of an offence case, which appears to have been not adhered to.

ARTICLE VII

As per the provisions contained in the Customs Notification No.21/2002 there is no legal requirement for issuance of any end – use certificate. The notification only stipulates that the imported goods should be used for the manufacture of intended goods. However, in violation of all procedures Shri O.P. Bhola recommended the issuance of End Use certificates not prescribed under the rules. The proforma used for the issue of the said End use certificate is a self-designed document not prescribed under the Provisions of Customs Act. The above act of Shri O.P. Bhola, shows his interest to favour the party and thereby collude and conspire to cause revenue loss to the Government. As per the provisions of Customs Act where end use is mandatorily prescribed, a copy of the end use certificate is always forwarded to the Assistant Commissioner of Customs of the concerned Sea Port/ICD. In this case no copy has been endorsed to the Customs Authorities in Kandla. This shows the malafide intention of Shri O.P. Bhola to favour the party. As per records Shri O.P. Bhola issued consumption certificate dated 5.9.2005 for a quantity of 4466.350 (MT) of OPO (NEG) in favour of Magpie Overseas Co., on this basis, end-use certificates were issued by the Divisional office. He did not check whether the goods have entered the manufacturing premises. He did not conduct any inquiries/checks/verifications in respect to manufacture of soap and sale thereof under sale invoices etc of these units. This causes a revenue loss of Rs.6.48 Crores (approx.) to the Government.

And he thereby contravened Rule 3(1)(i), 3(1) (ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964 and did not display devotion to duty, integrity and displayed gross negligence in the performance of his work."

2.5 The Inquiry Officer was appointed by the disciplinary authority and the applicant has also filed a detailed reply

dated 4.12.2009 (Annexure–A4). The Inquiry Officer after completion of DE proceedings returned the findings vide its Report (Annexure-A5) dated 11.1.2011 concluded that none of the Articles of Charge contained in the impugned Memorandum against the applicant stood proved. The Disciplinary Authority, on receipt of aforesaid Inquiry Report, examined the same and issued disagreement note dated 15.2.2013 (Annexure-A7), disagreeing with the findings of IO in respect of Articles of Charge No.I, III & VII, which was sent to the applicant along with a copy of aforesaid IO's report to enable him to make his representation. The applicant submitted his representation dated 21.2.2013 (Annexure-A8). The said representation of the applicant duly considered by the President, who did not find merit in the same and held that proven charges constitutes a grave misconduct warranting suitable penalty under Rule 9 of CCS (Pension) Rules, 1972, as the applicant was to be superannuation on 30.9.2007, the matter was sent to the Union Public Service Commission (UPSC) for its advice. The UPSC after examining the matter gave its advice vide letter dated 11.2.2014 proposed a penalty of 10% cut in the monthly pension of the applicant for a period of five years, which advice was forwarded to the applicant by the CBEC vide letter dated 20.2.2014 (Annexure A-9) to enable him to represent against the same. The applicant submitted his representation on aforesaid advice of the UPSC. The Disciplinary Authority

before passing the impugned order, considered the advice of the UPSC, who observed as under:-

"Article I

(a) The Commissioner observed that it is clearly evident from the prosecution documents (Ex S-2, S-4) that the CO, in the capacity of Supdt. Central Excise Range XXVII, New Delhi has issued /verified the consumption of the raw material imported vide various Bills of Entry therein by M/s Magpie Overseas CO during the period from May to August, 2005. In this consumption certificate, the CO has clearly verified that the entire quantity mentioned therein (Ex S-2 and S-4) have been fully utilized by the company in the manufacture of soap and further the Bonds as mentioned against the Bill of Entries be discharged as the party have fulfilled the obligation.

(b) It is further observed that the Inquiry Officer has missed the point that the charge under this Article is not that the CO should have ensured verifications/feasibility study at the time of Central Excise Registration of the units but in fact the charge is regarding failure on his part on conducting such feasibility study/verification, later, when the units sought to import huge quantity of oil during his tenure as Supdt. Central Excise Range -2. In fact the IO failed to take cognisance of the fact that the CO has duly verified the huge consumption of imported Palm Oil at concessional rate of customs duty to the tune of 3241.250 MT and 4466.350 MT on 28.06.2005 and 06.09.2005.

(c) It is further observed by the Commission that Rule 8 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996notified vide Customs' Notification No. 36/97(NT) dated 23.7.1996 cast responsibility on the concerned officers to ensure that the goods imported were used for intended purpose. The text of the Rule 8 ibid is as follows:

8. Recovery of Duty in certain cases. The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall ensure that the goods imported are used by the manufacture for the intended purpose and in case they are not so used, take act to recover the amount equal to the difference between

the duty leviable on such goods but for the exemption and that already paid, if any at the time of importation, along with interest at the rate fixed by notification issued under Section 28 AB of the Customs Act, 1962 for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that is liable to pay."

(d) The Commission observe that considering the large quantity of palm oil import and the small size of the unit, the CO was required to carry out necessary inquiries/verifications in consultation with the jurisdictional Range Supdt and Assistant Commmissioner/Deputy Commissioner to ensure proper use of imported materials i.e. Crude Palm Oil (non-edible grade) by M/s magpie Oversee Co. Such verification could have been done at any stage after the units was registered with Central Excise. The contention of the CO that M/s Magpie Overseas Co was registered prior to the period of CO has no relevant with the Article of Charge since Co was supposed to ensure that the imported raw material was to be consumed by the company for the end use during his tenure as Supdt. Range 28-Delhi II. ***In light of the above fats and evidences on records, the IO failed to take into account the main crux/lapse on the part of the CO under this charge by holding the same erroneously as unproved against him.***

(e) The Commission also observe the contention of the CO that no provision of any statutory law has been disclosed anywhere in the Article of Charge as to under what authority of unit/company. Further, Rule 8 ibid does not give any direction to the Range Supdt. and, as such, this rule is not at all applicable to the CO. No doubt, this contention of CO has some weightage. However, the fact remains that the Company was involved in procurement of huge quantity of palm oil, as a prudent revenue officer, a reasonable ground existed to verify its capacity to consume the said quantity of oil for manufacture of soap. ***But the CO did not bother about the need to inquire/check/verify whether the goods have entered the manufacturing premises and were used for intended purpose. If need be, he could have sought the permission of the competent authority to enter the premises. It is a fact that the acts of omission and commission on the part of the concerned officers, including CO, had caused a revenue loss of Rs.6.48 crores (apprx) to the Government as is evident from Ex S-1****.*

(f) In the light of above discussion, the CO has clearly failed to conducting proper verification/feasibility study of huge quantity of imported palm oil by M/s Magpie Overseas Co falling under his jurisdiction range no. 28. **Therefore, the Article 1 of the Charge stands 'prove' against the CO.**

Article III and VII:

(a) The Commission observed that the charge under Article III which was also one of the charges under Article VIII, is that while issuing consumption certificates, he did not conduct any inquiries/check/ verification to ascertain whether the imported goods had been used for manufacturing soap. This allegation has been dropped by the IO after accepting the claim put forth by the IO that they had issued consumption certificate after verifying the records maintained by the units.

(b) …….

(c) …….

(d) The Commission, however, observe that in the present case, no intimation regarding receipt of imported goods were being filed before the Range Supdts and the units were not filing Monthly return of consumption as required under the 'Rule'. The manufacturing capacity and details regarding size of the unit was available on record and it was not difficult for any prudent person to observe that the quantity of palm oil imported by the units were highly disproportionate to their manufacturing capacity. These facts provided enough indication that everything may not be in order and any prudent officer would have certainly caused further checms/inquiries/verifications to verify that the quantity of goods claimed as manufactured by the units had actually been manufactured by them and they were not misleading the officers by showing fake documents. ***It appears that the IO had not given any consideration to above facts and has simply accepted CO's contention that as per rules he was not supposed to ask the unit to get their project report and the feasibility study report verified and thus the IO held the charge as 'not proved' against him. In fact the CO being the jurisdictional in charge of range 28 was expected to raise an eye brow on the quantity of huge import of palm oil at concessional duty while verifying the end use of the same on 28.06.2005 and 5.9.2005 vide Ex S-2 and S-4.***

(e) …..

(f) In the light of above discussion, Article III of the charge stands as 'proved' whereas Article VII of the charge stands as 'partly proved' against the CO."

(emphasis supplied)

2.6 The Disciplinary Authority also carefully considered the detailed representation submitted by the applicant pursuant to receipt of UPSC advice in the matter and observed as under:-

(a) It is not correct that departmental proceedings against CO constitute a second inquiry on the same facts, same evidence and same charges as made in the first inquiry. The proceedings under Customs Act was to show cause him as to why penalty should not be imposed on him under section 112(a) and 117 of the Customs Act and for various reasons, adjudicating authority concluded that Section 112 and 117 were not invocable in their cases. Protection under Section 155 of Customs Act was also cited. On the other hand, the charges framed under Seven Articles of Charge mentioned in Annexure I of the Charge Memorandum mainly pertain to the misconduct/ misdemeanor in discharge of official duties in violation of CCS (Conduct) Rules, 1964. Adjudication proceedings covering the demand of duty against the defaulting unit with proceedings against the concerned departmental officers also for abetment in such acts and disciplinary proceedings covering the same events are two independent proceedings and can take place simultaneously. Disciplinary Authority is not bound to go by the outcome of the adjudication proceedings under Customs Act. He is concerned with the issue whether the Government servant has violated any provisions of CCS (Conduct) Rules in discharge of his duties. ***The relief given to Shri S.C. Pushkarna, by Hon'ble CAT, Chandigarh citing certain judgments, as he had also been exonerated in the adjudication proceedings is already under challenge in the Hon'ble Punjab and Haryana High Court and the Hon'ble High Court has stayed the execution of Hon'ble Tribunal order.*** *The matter is still pending. This Department has already imposed a penalty against Shri Pratap Singh, DC by imposing a penalty of 10% cut in pension for five years though he too was not penalized*

in departmental proceedings. Hence, the disciplinary authority is not barred from taking action against CO under CCS (Conduct) Rules. The Disciplinary authority and the UPSC, for well considered reasons have not agreed with the findings of the IO with respect to Article I and III and Article VII.

(b) It is incorrect to suggest that under self removal procedure, Central Excise Officers are barred from physically ascertaining whether the imported material has been received and utilized for the intended purpose and that they have to go only by the accounts produced by the importer. Regarding verification of receipts, Rule 10 Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 1996 in facts empowers the officers to physically inspect the receipt, though selectively.

"While the importer manufacturer has to inform the Range Superintendent of the receipt of the imported Goods within 2 days of the receipt (excluding holidays), occasional failure to do so in exactly 2 days should alone not be a cause of issuing show cause notices to the manufacturer. Once the intimation has been received, ***the Central Excise Officers may physically verify the receipt but only selectively****. It may be borne in mind that in case there is a short receipt at the factory vis-à-vis the quantity assessed/ cleared under the Bill of Entry, necessary action to recover the duty should invariably be taken.*

(c) Regarding requirement of ensuring that the goods imported under concessional duty are utilized for imported purpose. Rule 8 of the said Rules casts an obligation on the customs officer to ensure that the goods are used for the intended purpose – The (Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise) shall ensure that the goods imported are used by the manufacturer for the intended purpose and in case they are not so used take action to recover [the amount equal to the difference between the duty leviable on such goods ut for the exemption and that already paid, if any, at the time of importation, alongwith interest, at the rate fixed by notification issued under Section 28AB of the Customs Act, 1962, for the purpose starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.]

(d) Range officers are eyes and ears of the department and any disconcerting facts relating to a unit under their

control needs to be brought by them to the notice of the Divisional/higher officers so that they may take necessary action where only the higher authorities are empowered under statute to take action. Range Officers in such cases can not take a plea that since the powers for taking action are vested with higher authorities, they are not concerned and the senior officers in discharge of their responsibility cast upon them under statute for protection of revenue. The CO appeared to be grossly negligent in this regard. As a prudent revenue officer, it was always open for him to have looked for the project report or feasibility study of M/s Magpie Overseas Co to ascertain its capacity to consume huge quantity of palm oil, which it continued to procure during his period as a Range Supdt. Also since the firm was involved in procurement of huge quantity of palm oil, a reasonable ground existed to verify its capacity to consume the said quantity of oil for manufacture of soap. But the CO did not bother about the need to inquire/check/verify whether goods have entered the manufacturing premises and where used for intended purpose. If need be, he could have sought the permission of Competent Authority to enter the premises. His inactions caused revenue loss of Rs.6.48 crores. The advice of the UPSC is well reasoned and there is no ground to accept the various contentions of CO that there was no lapse on his part.

(e) There is no requirement under CCS (CCA) Rules, 1965 to invariably prove a document through the author of the document. It is a settled principle that strict rules of evidence as under Evidence Act are not applicable in the department proceedings. The judgments cited are not in relation to the cases covered under CCS (CCA) Rules.

(f) The confessional statements 19.09.2005 and 04.05.2006 of Shri Saurabh Agarwal, Prop M/s Magpie only relate to his own admissible of how he diverted the goodsd imported under concessional rate of duty and created false records to mislead the departmental officers. Shri Saurabh Agarwal has not questioned the role of Shri B.S. Bhila in any manner. As such his non appearance does not in any way cause any prejudice to CO. In the adjudication order dated 14.11.2007 the differential duty demand totally Rs.7,423,41 841 on import of Crude Palm Oil (Non Edible Grade) values at Rs.16,19,64798/- has been confirmed with a penalty of equal amount on M/s Magpie Overseas under Section 114A of the Customs Act. The CO has cited the said adjudication order SCN in his present reply. As the act of diversion of the imported raw material on concessional rate of duty is established in the adjudication order, CO, who was a party to the said proceedings, can not now

question the veracity of the two statements solely on the ground that Shri Sourabh Agarwal did not appear in the inquiry.

(g) The charges sought to be proved against CO can not be construed as vague. The Statement of imputation explained the charges. In any case, the charge memo was issued on 11.6.2007, after a much detailed SCN was issued to him on 17.5.2006. Thus, CO was fully aware of all the basic facts on which the charge memo was based.

(h) It is not the question whether prosecution has been able to prove through evidence that the unit did not have sufficient storage and manufacturing capacity vis a vis the quantum of goods imported. The issue is that in the light of huge import of raw material at concessional rate of duty, it was natural for any prudent revenue officer to have a valid doubt whether the unit has the required capacities and make necessary inquiries, by seeking the project report etc. and if necessary by visiting the factory. If Rule 22 (1) of the Central Excise Rules, 2002 empowered the Commissioner to allow permission to visit the unit, nothing prevented him from submitting facts and seeking necessary direction of superior officers in this regard. The CO miserably failed to do so. Similarly, while issuing consumption certificates, he did not conduct any inquiries/check/verification to ascertain whether the imported goods had been used for intended purpose viz. manufacturing soap. He acted in a very mechanical manner without due application of mind, thus causing substantial loss to revenue due to his casual and indifferent manner of functioning. The advice of the UPSC regarding establishment of Articles of charges therefore appears acceptable. The quantum of penalty advised by UPSC is commensurate with the gravity of the proven charge and may also be considered for acceptance.

Now, therefore, based on facts and circumstances and evidence available on record, the President considers that the advice of UPSC is just and reasonable and merits acceptance and he imposes a penalty of "10% cut in monthly pension of Shri O.P. Bhola, Supdt. (Retd.) for a period of five years". He orders accordingly."

2.7 Feeling aggrieved by the aforesaid Order No.77/2014 dated 12.11.2014 (Annexure-A1), the applicant has filed the instant OA.

3. The respondents have filed their counter affidavit on 20.8.2015 in which they have raised preliminary objection of non-joinder of necessary party, as the applicant has raised the allegations of non-application of mind against the UPSC and the UPSC has not been arrayed as party respondents in the instant case. Therefore, the instant OA is liable to be dismissed on the ground of non-joinder of necessary party.

3.1 They further stated that tenets of natural justice were scrupulously followed at every stage of the proceedings and ample opportunities were given to the applicant to defend himself, which the applicant properly utilized. The quality of evidences produced by the department substantiating the charges were duly discussed by the then DA in his 'Note of Disagreement, a copy of which was forwarded to the applicant and his representation was taken into account. The charges leveled against the applicant in the Charge Memorandum are neither vague, nor cryptic. All the Articles of charge are specific to particular acts of omission and commission or misconduct/misdemeanor on the part of the applicant in discharge of his official duties and are duly substantiated with documentary evidences.

3.2 They also stated that in the case of Sh. S.C. Pushkarna, the Charge Memorandum was set aside by the Hon'ble Tribunal but the execution of the judgment passed by the Hon'ble Tribunal has been stayed by the Hon'ble Punjab and

Haryana High Court and the matter is still pending before the Hon'ble High Court.

3.3 The applicant was made one of the co-accused persons in the Demand-cum-SCN issued to the importer for acts of omission and commission on the part of the officers of the department for violating provisions of the Customs Act, 1962, thereby leading to loss of revenue to the Government. The departmental proceedings under CCS (CCA) Rules, 1965 are independent of the Customs Act, 1962. The two proceedings are different and are covered by two different set of Rules/Act. The show cause notice had been issued under Section 28 of the Customs Act, 1962 for a deliberate act committed by the applicant whereas disciplinary proceedings were initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 for failure to display devotion to duty, integrity and gross negligence in his work.

3.4 They further stated that the applicant was exonerated in the adjudication proceedings as the IO in the disciplinary proceedings held all seven Articles of Charge as 'Not Proved'. However, the then Disciplinary Authority did not agree with the findings of the Inquiry Officer with regard to Article-I and III, holding the charges as proved, and Article-VII as 'partly proved'. Due process of law was followed whereby the Note of Disagreement was forwarded to the applicant before finalizing the tentative opinion of the disciplinary authority.

3.5 They also stated that after going through the facts, circumstances, record and evidences, UPSC contended that in the light of huge import of raw material at concessional rate of duty, it was natural for any prudent revenue officer to have a valid doubt whether the unit had the required capacities and make necessary inquiries, by seeking the project report etc. and if necessary by visiting the factory. If Rule 22 (1) of the Central Excise Rules, 2002 empowered the Commissioner to allow permission to visit the unit, nothing prevented him from submitting facts and seeking necessary direction of superior officers in this regard. The applicant miserably failed to do so. Similarly while issuing consumption certificates, he did not conduct any inquiries/check/verification to ascertain whether the imported goods had been used for intended purpose viz. manufacturing soap. He acted in a very mechanical manner without due application of mind, thus causing substantial loss to revenue due to his casual and indifferent manner of functioning. The quantum of penalty advised by UPSC was commensurate with the gravity of the proven charge. The President, considering the advice of the UPSC as just and reasonable, imposed a penalty of 10% cut in monthly pension on applicant for a period of five years.

4. The applicant has also filed his rejoinder affidavit besides reiterating the averments made in the OA, he further stated that UPSC is not a necessary party as the Disciplinary

Authority in the instant case was the Commissioner of Central Excise and the impugned order dated 12.11.2014 had been passed in the name of the President of India by the Under Secretary to the Government of India. Thus, the cause of action had lain against the Union of India and Commissioner of Central Excise, both of which have been duly made a party to the instant OA.

5. We heard Shri Piyush Kumar, learned counsel for the applicant and Shri Piyush Gaur, learned counsel for the respondents and have carefully perused the material placed on record.

6. Counsel for the applicant submitted that impugned order has been passed on the basis of presumptions, assumptions and surmises without any material, cogent or tangible evident and due appreciation of facts as the impugned Memorandum had leveled the very same allegations as where leveled in the Show Cause Notice issued to the applicant in 2006. In support of this contention, learned counsel relied upon the judgment of this Tribunal in the case of ***R.D. Gupta vs. Union of India and others*** (OA 2862/1997) which was upheld by the Hon'ble High Court in CWP No.876/2001 as also by Hon'ble Apex Court in SLP No.9431/2001. The said judgment has also been followed by the Chandigarh Bench of this Tribunal in the case of ***Rajiv***

Sood, Inspector vs. Union of India & others (OA No.539-HR-2007 and OA No.75-HR-2008).

6.1 Counsel further submitted that in a cognate case, the chargesheet issued to Shri S.C. Pushkarna, also a co-noticee along with the present applicant in the show cause notice dated 17.5.2006, was quashed *in-limine* by the Hon'ble CAT, Chandigarh vide order dated 27.11.2009 in OA No.647-HR-2009. As such on the ground of parity alone, the impugned Memorandum deserved to be quashed by the disciplinary authority.

6.2 Counsel also submitted that the Disciplinary Authority grossly erred in holding that the applicant failed to look for the project report or examine the feasibility study of the unit of M/s Magpie Overseas Co. vis-à-vis its manufacturing capacity as compared to the huge quantity of Palm Oil sought by the unit to be procured at concessional rate of customs duty for the manufacture of soap, as there was nothing on record to establish the same. He further stated that the charges leveled against the applicants vide impugned Memorandum were vague and cryptic as no statutory provision had been spelt out anywhere in the Articles of Charge.

6.3 Counsel further submitted that the contention of the applicant that no provision of any statutory law has been

disclosed anywhere in the Articles of Charge has been accepted by the UPSC while giving its advice in the matter.

6.4 Counsel further submitted that reliance was placed on the documents mentioned under Annexure III of the same, which were neither proved through any evidence nor was the applicant ever given an opportunity to cross-examine the author of the same. In support of this contention, counsel relied upon the judgment in the case of ***P.S. Gopala Pillai vs. Union of India and others*** (224 Swamy's C.L. Digest 1993) and ***Virendra Prabhkar vs. Union of India*** (I-964/PB/86) of the Chandigarh Bench. Counsel further submitted that a statement whether confessional or not, needs independent corroboration. To buttress his argument, leaned counsel relied upon the judgment in the case of ***Sheshanna Bhumanna Yadav vs. The State of Maharashtra***, (1970) 2 SCC 122.

6.5 Counsel further submitted that any statement recorded under Customs Act, 1962, the same is not admissible under an enquiry conducted under CCS (CCA) Rules, 1965 as per the directions issued by Govt. of India vide F.No.C-140105/2011-Ad. V dated 2402.2011.

6.6 Counsel further submitted that advice of CVC/UPSC is merely an advice and is neither a dictation nor a direction/instruction to the Disciplinary Authority. The Disciplinary Authority, being quasi-judicial authority, is not

bound by any such advice and is required to adjudicate the case independently without any prejudice.

6.7 Counsel for the applicant also submitted that punishment awarded to the applicant vide impugned order does not commensurate with the gravity of misconduct alleged to have been proved against the applicant and therefore, this Tribunal is required to consider the same.

7. Counsel for the respondents submitted that principles of natural justice were strictly followed at every stage of the proceedings and ample opportunities were given to the applicant to defend himself, which the applicant properly utilized. The quality of evidences produced by the department substantiating the charges were duly discussed by the then DA in his disagreement note. He further submitted that due process of law was followed at every stage of the DE proceedings as there was no irregularities committed by the respondents. All the Articles of charge are specific to particular acts of omission and commission or misconduct/misdemeanor on the part of the applicant in discharging of his official duties and are duly substantiated with documentary evidence.

7.1 Counsel further submitted that reliance placed by the applicant on the decision of Chandigarh Bench of this Tribunal in the case of ***S.C. Pushkaran*** – co-accused is of no help as the said decision of Chandigarh Bench has been

stayed by the Hon'ble Punjab and Haryana High Court and the matter is still pending.

7.2 Counsel further submitted that departmental proceedings initiated under CCS (CCA) Rules, 1965 are independent of the Customs Act, 1962 as the same are different and covered by two different set of rules/act.

7.3 Counsel also submitted that although IO exonerated the applicant from all the Articles of charge but the Disciplinary Authority did not agree with the findings of the IO with regard to Articles I and III, tentatively holding the charges as proved and Article VII as 'partly proved'. Therefore, disagreement note was issued by the Disciplinary Authority to the applicant to represent against the same before finalizing the said tentative opinion.

7.4 Counsel further submitted that as the applicant was going to superannuate, the Disciplinary Authority referred the matter to the UPSC for its advice and upon receipt of the advice of the UPSC, the Disciplinary Authority issued the Order dated 12.11.2014 (Annexure A-1) imposed the penalty of 10% cut in the monthly pension of the applicant for a period of five years.

7.5 Counsel lastly submitted that since procedures have been followed scrupulously while initiating the departmental inquiry proceedings, the impugned order dated 12.11.2014 is

not liable to be interfered with by this Tribunal as held by this Courts as well as Hon'ble High Courts and Hon'ble Supreme Court time and again.

8. We have carefully perused the impugned order dated 12.11.2014 and we have also put emphasis on the observations made by the UPSC in the matter, as referred to above.

9. Before adverting upon the contentions of the applicant, we would like to say that scope of judicial review in a disciplinary matter is very limited as held by the Hon'ble Apex Court in catena of judgments and the same can be deduced from the judgments of the Hon'ble Apex Court in ***B.C. Chaturvedi Vs. U.O.I. & Ors.***, reported in AIR 1996 SC 484, it was held as under:-

> "When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts

> the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case".

Further in ***Chairman and Managing Director, United Commercial Bank & Ors. vs. P.C. Kakkar*** reported in **2003 (4) SCC 364,** Hon'ble Supreme Court has held as follows:-

> "It is settled that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or moral standards. In view of Wednesbury principle the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review

> is limited to the deficiency in decision-making process and not the decision."

Further in ***Chairman & Managing Director, V.C.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu*** reported in 2008 (5) SCC 569 at 570 it was held as under:-

> "Jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. The High Court in exercise of its jurisdiction under Article 226 also cannot, on the basis of sympathy or sentiment, overturn a legal order. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke doctrine of proportionality. If decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when misconduct stands proved."

10. From the above observations of the Apex Court it is clear that the scope of judicial review is limited to the deficiency in decision-making process and not the decision. The deficiency in decision – making process is whether the inquiry was held by a competent officer; whether rules of natural justice are complied with; whether the findings or conclusions are based on some evidence; whether the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion; and that the finding must be based on some

evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. ***Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal***. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge as the disciplinary authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere only where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding.

11. Now keeping in view the aforesaid principles in mind, we proceed to adjudicate upon the contentions of the

applicant. First contention of the applicant is that the disciplinary proceedings initiated by the respondents were based on the same facts and documents which were part and parcel of earlier proceedings initiated under Customs Act. This contention of the applicant is not acceptable keeping in view the fact that in a similar case of co-accused when this Tribunal granted relief and on appeal preferred by the respondents before the Hon'ble Punjab and Haryana High Court, the operation of the order passed by this Tribunal was stayed and the matter is still pending for adjudication. Further the proceedings initiated against the applicant under the Customs Act were totally in relation to different charge and the Articles of charge leveled in the disciplinary proceedings were totally different and distinct and the same has no nexus with the charges leveled in the said proceedings initiated under Customs Act. Reliance placed by the applicant in the case of ***R.D. Gupta vs. Union of India and others*** (supra) is distinguishable on facts and as such not of any help to the applicant.

12. Next contention of the applicant is that disciplinary authority has erred in issuing disagreement note as the IO has after elaborate examination of the each articles of charge returned the findings that no articles of charge stood proved against the applicant. This contention has no force as the disciplinary authority has every right to disagree with the

findings arrived at by the IO vide its report, as in this case the disciplinary authority tentatively held that Articles of charge No.I, and III were proved and VII 'partly proved' and required the applicant to submit his representation against the same.

13. The further contention of the applicant is that the Disciplinary Authority grossly erred in holding that the applicant failed to look for the project report or examine the feasibility study of the unit of M/s Magpie Overseas Co. vis-à-vis its manufacturing capacity as compared to the huge quantity of Palm Oil sought by the unit to be procured at concessional rate of customs duty for the manufacture of soap, as there was nothing on record to establish the same. This contention is also not sustainable in view of the categorical findings returned by the disciplinary authority as well as Union Public Service Commission in this regard.

14. It is true that no provision of any statutory law has been disclosed anywhere in the Articles of Charge has been accepted by the UPSC while giving its advice in the matter, however, the UPSC observed that in fact the applicant being the jurisdictional In-charge of Range 28 was expected to raise an eyebrow on the quantity of huge import of palm oil at concessional duty while verifying the end use of the same on 28.6.2005 and 5.9.2005 vide Ex.S-2 and S-4.

15. In view of the above, we find the impugned order passed by the disciplinary authority is a speaking and reasoned order

as all the averments raised by the applicant in his representation have been duly considered and thereafter the impugned order has been passed keeping in view the advice given by the UPSC in the matter.

16. Counsel for the applicant further raised a ground that the punishment awarded is not commensurate with the gravity of the charge proved against the applicant. On the question of proportionality of punishment, Hon'ble Supreme Court has held that *it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment.* In **Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad** reported in 2010 (3) ALSLJ SC 28 it has been held by Hon'ble Supreme Court as under:-

> "The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal".

But having regard to the gravity of the articles of charge nos.I, III and VIII and the punishment awarded by the disciplinary authority vide impugned order dated 12.11.2014, we are of

the considered view that punishment imposed by the impugned order dated 12.11.2014 is not so disproportionate that it shocks the conscience of the court, therefore, we do not think any case is made out for interference by the Tribunal even on the question of quantum of punishment.

17. In the result, for the foregoing reasons, the present OA being devoid of merit is liable to be dismissed and the same is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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