

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

REVIEW APPLICATION NO. 170/00051/2017

IN

ORIGINAL APPLICATION NO. 170/01030/2016

DATED THIS THE 16TH DAY OF NOVEMBER, 2017

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Deepak M. Ganeyan,
S/o M.N. Ganeyan,
Aged 51 years,
Working as Superintendent of Central Excise,
Bangalore V Commissionerate,
Head Quarters (STAT), 2nd Floor,
South Wing, BMTC Building,
Shivajinagar, Bengaluru – 560 015,
Residing at No. 476, 10th Cross,
2nd Main, Pennfield Garden,
Srirampura Village, Jakkur Post,
Bengaluru – 560 064.

..... Review Applicant

(By Advocate Shri A.R. Holla)

Vs.

1. Union of India,
By Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi – 110 001.

2. The Chief Commissioner of Central Excise,
Bangalore Zone, P.B. No. 5400,
C.R. Building, Queen's Road,
Bengaluru – 560 001.

3. The Commissioner of Central Excise,
Bangalore V Commissionerate,
Head Quarters (STAT), 2nd Floor,
South Wing, BMTC Building,
Shivajinagar, Bengaluru – 560 015

.... Review Respondent

ORDER (BY CIRCULATION)

DR. K.B. SURESH, MEMBER (J):

Heard. The pari materia provision on examination of witnesses exist in criminal jurisprudence. If a witness whose statement had been recorded under Section 162 or 164 dies, then for whatever the value of evidence is worth, even without cross-examination, it is taken up as correct as these documents are available to the concerned person. Here in this case apparently 108 statements of these witnesses have been recorded therefore with the same effect 108 statements can be utilized in this case also. Therefore at this point of time Shri A.R. Holla, learned counsel for the review applicant, submits a submission that one of the witnesses, he is unable to recollect whom was cross-examined the other is either dead or absconding. But still both of them had recorded statement under 108 of the concerned Act as the Hon'ble Apex Court had held that it is sufficient in itself to be as a confessional statement. The extent to which one co-accused's confession of statement will bind the other co-accused depends on the facts of the case which can be gone into only during the disciplinary enquiry. There cannot be any doubt that there cannot be an embargo against the disciplinary enquiry unless the charges therein had to be disregarded under the premise available under Section 482 of the CRPC. Such is not the case here. The Tribunal had said that the earlier order will not be sustained only for the reason that these two witnesses were

not cross-examined but it was not brought to the notice of the Tribunal at that point of time. Therefore there has to be a *denovo* enquiry in which all opportunities will be granted to the applicant to prove his case. At this point of time Shri A.R. Holla, learned counsel for the review applicant, raises an objection that it may not be a *denovo* enquiry but further enquiry. Whatever nomenclature is used, the idea is that just because two witnesses whom the applicant wants to rely on were not examined or not effectively cross-examined by the applicant himself and for that the Disciplinary Authority's orders is to be set aside then, as justice must strike both ways impartially, an opportunity must be made available to the respondents also to seek their re-examination or in cross-examination by the applicant as the case may be if they had not been cross-examined once again. If, in the meanwhile, they are not permanently available, then the efficacy of the statement under 108 will come to the fore therefore then the further enquiry can be concluded and appropriate orders passed. If the respondent authority is unable to produce these witnesses, the applicant can also produce them as his witnesses if he is in existence and he wants to do so. The Disciplinary Authority will give him appropriate opportunity for doing so but RA do not lie on any other ground.

2. With this explanation, RA is closed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/