

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.780 of 2012

Date of CAV:08.08.2018.

Date of Order :19 .09.2018.

Between :

G.Srihari Naidu, s/o G.Manikya Rao,
Aged about 59 yrs, Occ:Superintendent,
O/o Customs & Central Excise,
Commissionerate-II, Visakhapatnam,
r/o Flat No.4, Anurag Apartments,
Beside Muthoot Finance, Pithapuram Colony,
Visakhapatnam.

...Applicant

And

1. The Union of India, rep., by the
Secretary, M/o Finance, Dept. Of Revenue,
Central Board of Excise & Customs,
New Delhi.
2. The Chief Commissioner, Customs &
Central Excise, Vizag Zone, Central Revenues
Building, Port Area, Visakhapatnam.
3. The Commissioner, Customs & Central Excise,
Hyderabad-II Commissionerate,
Basheerbagh, Hyderabad.
4. The Commissioner, Customs & Central Excise,
Hyderabad-II Commissionerate, Basheerbagh,
Hyderabad.
5. The Commissioner, Customs & Central Excise,
Visakhapatnam-II Commissionerate,
Visakhapatnam.

... Respondents

Counsel for the Applicant

... Mr.M.V.Krishna Mohan,

Counsel for the Respondents

...Mr.A.Radhakrishna, Addl.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant has filed the present OA challenging the Order-in-Appeal No.20/2012, dated 23.05.2012 issued by the Appellate Authority, which upheld the penalty imposed on the applicant by the Disciplinary Authority.

Brief facts of the case:

2. The applicant while working as Superintendent, Bolarum III Range of Hyderabad-I Commissionerate was issued with charge sheet dated 27.04.2006 alleging that during the period from 21.05.2002 to 31.05.2003, he did not exercise proper control over the affairs of the factory of M/s Handum Industries Limited (HIL), a 100% Export Oriented Unit (EOU), having factory at Medak District, manufacturing re-rolled products such as M.S.Rods, Bars, Flats, Channels, Angles etc. It was alleged that M/s HIL imported duty free raw materials viz., non-alloy steel blooms, billets, slabs and Ingots etc., and diverted the same to DTA without actually bringing the products to the factory for their intended use. The charge sheet stated that the applicant accommodated the assessee in filing the fabricated ER-2 returns for the month of March, 2003, showing clearance of their finished goods to the tune of 14,286.790 Metric Tonnes, which is in contradiction to the quantities in the production registers recovered by the Department of Revenue Intelligence (DRI) officers during the search operation in the

factory premises . It was alleged that the fabricated returns were antedated and acknowledged by the applicant as 07.04.2005. This was done to scuttle the case registered by the DRI against the said firm. Therefore, the applicant failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government servant and therefore has rendered himself liable for action under Rule 14 of the CCS (CCA) Rules, 1965. .

3. The applicant submitted his explanation to the charge memorandum denying the charges levelled against him. On denial of charges, an Inquiry Officer was appointed.

4. During the course of the enquiry, the applicant requested permission to engage one Sri B.V.Kumar as Defence Assistant, which was denied by the Disciplinary Authority as well as Inquiring authority. After approaching this Tribunal in OA.No.117/2008, the Disciplinary Authority was directed to grant permission to the applicant to engage Sri B.V.Kumar as legal assistant.

5. The Inquiry Officer held that the charge of accommodating the assessee namely, M/s HIL by acknowledging that the ER-2

return for the month of March 2003, had been antedated was proved, but the charge that he did not exercise proper control over the affairs of the factory M/s HIL, 100% EOU was not proved. Accordingly, it was held that the charged officer contravened Rule 3 (1) (i), (ii) and (iii) of the CCS (Conduct) Rules, 1964. The Disciplinary Authority, after considering the representation of the applicant, imposed a major penalty of reduction by 4 stages in time scale of pay equivalent to four increments from Rs.22,630/- to Rs.19,490/- in PB-II i.e., Rs.9300-34,800/- for a period of 3 years and 6 months with effect from 2.2.2010.

6. The applicant thereafter preferred an appeal dated 6.3.2010 before the Appellate Authority against the order of the disciplinary authority stating that the Inquiry Officer and the Disciplinary Authority had relied entirely upon the statement of Sri P.V.Ramana Reddy dated 10.01.2004 and Shri Shaik Meera Mohiddin dated 16.02.2004, which was recorded under Section 108 of the Customs Act, 1962 by the DRI behind his back.

7. The Appellate Authority passed an order dated 23.05.2012 based on UPSC advice and all relevant records rejecting the appeal preferred by the applicant and upholding the penalty imposed upon him by the Disciplinary Authority. The said order is the impugned order.

8. The learned counsel for the Applicant stated that it was the primary responsibility of the department to produce the said Shri Shaik Meera Mohiddin as a prosecution witness as the Department has relied upon his statement given before the DRI. It is also his contention that if the charge that the applicant did not exercise proper control over the affairs of the HIL factory as not proved, the findings of the Inquiry Officer that the charge of accommodating the assessee by acknowledging the ER-2 return for March 2003 in back date to scuttle the case booked by the DRI is perverse.

9. The learned counsel for the Applicant has cited the judgment of the Hon'ble Supreme Court in the case of *Roop Singh Negi v. Punjab National Bank & others* (2009 STPL 2424 SC), wherein it has been held that –

"The only basic evidence whereupon reliance has been placed by the Enquiry Officer was on the purported confession made by the appellant before the Police. According to appellant, he was forced to sign on the said confession, as he was tortured in the police station."

It is further held that –

"The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Inquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the

Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

10. It is confirmed that after DRI had raided the assessee firm, the inquiry had confirmed that the charged officer had manipulated a separate RG-1 Register for deemed exports to claim enhanced manufacturing in comparison to the figures reflected in the RG-I Register and Invoices seized by the DRI and accordingly submitted antedated ER-2 Returns to weaken the case of the DRI. The Inquiry Report clearly brings out that usage of such large number of Invoices by M/s HIL in the month of March, 2003 without intimation also reads that there was some manipulation to claim enhanced manufacturing figures by M/s HIL which could not have been done with the active connivance of the CO/Appellant. It is also stated that the applicant was guilty as the deposition of Sri P.V.Ramana Reddy is actually contrary to his own statement recorded before the DRI officer which has not been retracted and that such a statement recorded before the Customs Officer is admissible as evidence. The charge of active connivance in helping M/s HIL to manipulate and submit antedated ER-2 Returns was therefore proved but the charge of unbecoming of Government servant has not been proved. In the appeal, no new point or fact has been brought out which can change the outcome of the case.

11. Therefore, it is not correct to state that the Inquiry Officer and Disciplinary Authority had entirely relied upon the statements made by Sri P.V.Ramana Reddy and Sri Shaik Meera Mohiddin, which was recorded by the DRI.

12. The facts and the circumstances cited by the learned counsel for the Applicant are different as stated in the above cited Supreme Court judgment where admittedly there was no direct evidence. Therefore, the above cited judgment is not applicable in the present case.

13. The learned counsel for *the Respondents has cited the judgment of the Hon'ble Supreme Court in K.I.Pavunny v. Assistant Collector (Head Quarter), Central Excise Collectorate, dated 3.2.1997, wherein it categorically held that –*

“Though the Customs Officer is an authority within the meaning of Section 24 of the Evidence Act, by reason of statutory compulsion of recording the statement of the accused giving voluntary statement pursuant to his appearing either after issuance of summons or after the appellant’s surrender, such statement cannot be characterised to have been obtained by threat, inducement or promise.”

14. It has been further held by the Hon'ble Supreme Court in the said case that -

"The customs officer is not a Police Officer nor is he empowered to issue charge sheet under Section 173 of the Code though he conducts enquiry akin to an investigation under some of the provisions of the Code, and it has been laid down that the customs officer therefore is not primarily concerned with the detection and punishment of crime. But he is merely interested in the detection and prevention of crime and the officers recording their statements were only doing their duty in bringing to the notice of the appellant the provisions of the statute and the appellant was bound to speak the truth when summoned under Section 108 of the Act with the added risk of being prosecuted, if he gave false evidence."

15. It is also the contention of the learned counsel for the Respondents that the applicant was given a personal hearing by the Disciplinary Authority before passing the penalty order. Therefore, there has been no violation of the principles of natural justice as the applicant has been given all opportunities to present his case during the enquiry proceedings.

16. In view of the above mentioned pleadings and documentary evidence on record, the OA is dismissed. No order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 19th day of September, 2018

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