

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

O.A.No.24/2019

Ahmedabad, this the 21st January, 2019

**Coram : Hon'ble Ms. Archana Nigam, Member (A)
Hon'ble Shri M.C.Verma, Member (J)**

Shri Rahul Ravidutt Bhandari
Age about 52 years
Working as Superintendent,
Central Excise and Services Tax, Division-V,Daman, Vapi,
Residing at 801/A, Shubham Tower-3
Vapi-Chala Road, Vapi,
Taluka Padri,
District : Valsad - 396 191. Applicant

(By Advocate : Shri N.S. Kariel)

VERSUS

1. Union of India,
Notice to be served through
The Secretary
Ministry of Finance, Dept. of Revenue
North Block, New Delhi 110 001.
2. Ministry of Personnel, Public Grievances and
Pensions,
Notice to be served through

The Secretary,
Department of Personnel & Training
North Block, New Delhi 110 001.

3. The Chief Commissioner
Central Excise and Service Tax, Vadodara Zone
Central Excise Building
Race Course Circle, Vadodara 390 007.
4. The Commissioner
Central Excise and Services Tax, Daman
7th Floor, Fortune Square-I
Daman Road, Vapi- 396 191.
5. The Assistant Commissioner
Central Excise and Service Tax
Daman Commissionerate,
6th Floor, Fortune Square-I
Daman Road, Vapi 396 191. Respondents

OR D E R (ORAL)

Per : Hon'ble Shri M.C. Verma, Member (J)

Shri N.S.Kariel, counsel for the applicant.

2. The matter is at notice stage and present one is the second round to litigation qua same contemplated departmental enquiry. Heard. Previously, applicant has preferred OA No.515/2017 before

Bench of this Tribunal and vide Order dated 07.12.2017, Bench of this Tribunal has disposed off said OA and the operative portion of the Order passed in OA No.515/2017 reads: “.... ***This inquiry will commence only after the said issues are satisfied. On completion of 313 questioning, on very next date, the applicant will inform by the letter to the concerned authority that 313 questioning is concluded and proceedings be taken thereafter. The OA is disposed of to this limited extent in limine. No costs.***”

3. Order passed in OA No.515/2017 was challenged by the respondents of OA, before Hon’ble High Court, in SCA No.6889/2018, and during pendency of said SCA, it was given out jointly by the petitioners as well as respondents employees of the SCA that Order dated 19.9.2018, whereby the Appellate Authority has directed that inquiry may be recommended and may be conducted on day to day basis, has been passed by Appellate Authority. Shri Kariel, learned counsel, who appeared in SCA No.

6889/2018 on behalf of the respondents (applicant of OA) submitted, before Hon'ble High Court, that the respondents desires to approach the Tribunal with appropriate applications against the decision by the Appellate Authority. Needless to say OA No. 515/2017 was preferred when the matter was pending before appellate authority and the appellate authority has not passed the order. In view of the submissions, noted above, Hon'ble High Court disposed off SCA as infructuous.

4. In aforesaid background, vide instant OA, the applicant has challenged Order dated 19.9.2018 (Annexure A-1) in instant OA. The operative portion of impugned order, dated 19.9.2018 reads as under :

“.....Please refer to your application dated 30.3.2017 addressed to the Chief Commissioner (CCO), Central Excise, Customs & Service Tax, Vadodara Zone, Vadodara and copy endorsed to this office, on the above subject.

In this connection, enclosed please find herewith an original copy of letter bearing F.No.II/39(CON)33/CCO/2017 dated 01.8.2017 issued by

the Additional Commissioner (CCO), CGST & CE, Vadodara Zone meant for you.

*Please acknowledge the receipt of this letter along with this enclosure(s).....” whereas enclosed letter, dated 01.8.2017, of impugned order reads: “**Sub:- Appeal against Order F.No.II/s(VIG) 10/2011 Dtd. 27.3.2017 passed by CCE, Daman – matter regarding.** Kindly refer to the request letter dated 30.3.2017 received from Shri Rahul Bhandari, Superintendent, by this office and copy thereof endorsed to your office and your office letter F.No. II/08(VIG) 10/2013 Dtd. 11.4.2017 on the subject matter cited above. In this regard, Chief Commissioner, Central Goods & Service Tax and Central Excise, Vadodara Zone, while disposing off the request has directed that the Commissioner may be advised to proceed with the enquiry.”*

5. Heard. Order dated 07.12.2017 passed by the Tribunal in OA No.515/2017 has neither been interfered nor has been modified and nor has been set aside by the Hon’ble High Court and the SCA No.6889/2018 was not disposed off on merit but observing, *that in*

view of the submission and statement made by learned advocates for the petitioners and respondents, it has emerged that now there is no need or justification to prosecute the SCA on merits and the cause to prosecute does not survive and that if and when the employee approach the Tribunal against order dated 19.9.2018, the Tribunal will pass appropriate order, Hon'ble High Court disposed off the SCA as infructuous.

6. The Order passed in OA No.515/2017 thus still hold good and fresh OA thus is not maintainable. Even in case of violation of the Order the appropriate relief may not be through OA.

7. With said observation and holding that present OA is not maintainable and deserves to be dismissed, the OA is dismissed.

**(M.C.Verma)
Member (J)**

**(Archna Nigam)
Member (A)**