

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01078/2016

Tuesday, this the 20th day of August, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

V.T.K. Nayanar, S/o. Shri M.P. Narayanan Namboodiri, aged 63 years,
Commissioner of Central Excise & Customs (Retd), 2A, Jomer Haven
Apartments, Illom Road, Paliyam Road Cross, Ernakulam,
Cochin - 682 016. **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary,
Department of Revenue, North Block, New Delhi – 110 001.
2. Chairman, Central Board of Excise & Customs,
North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise & Customs,
Coimbatore Zone, 6/7 A.T.D. Street, Race Course,
Coimbatore – 641 018.
4. Commissioner of Central Excise & Customs,
Central Revenue Buildings, B.B.Kulam, Madurai – 625 002.
5. Central Vigilance Commission, Satarkta Bhavan, Block-A,
GPO Complex, INA, New Delhi – 110 023.
6. Secretary, Union Public Service Commission,
Dholpur House, New Delhi – 110 069. **Respondents**

**[By Advocates : Mr. S.R.K. Prathap, ACGSC (R1-5) and
Mr. Thomas Mathew Nellimoottil (R6)]**

This application having been heard on 06.08.2019 the Tribunal on
20.08.2019 delivered the following:

ORDER

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member –

The applicant is a retired Commissioner of Central Excise and Customs. He joined the Indian Revenue Service (Customs & Central Excise) on 1.9.1981 as a direct recruit and after rendering 32 years of service, retired on superannuation on 30.9.2013. While working as Commissioner of Central Excise & Customs, Madurai the applicant was served with a charge memo dated 27.9.2013 with the following Articles of Charges:

“Article-I

That Shri V.T.K. Nayanar, Commissioner of Central Excise, Madurai while passing the order in original MAD-CEX-000-COM-01-2012 dated 31.5.2012 has committed lapses as mentioned below:

As regards SCN dated 4.7.2001:

- did not discuss the evidentiary value of any of the documents/evidences as listed in Annexure B to the said Show Cause Notice while not upholding the department's contention.
- had not discussed and considered the Mahazar dated 12.1.2001 drawn by the officers at M/s. Priya Mills in connection with the seizure of the said goods, in the presence of independent witnesses and also failed to consider that the same was not disputed by the noticees.
- had failed to consider the contents of the statements dated 12.6.2001 of Shri K. Shanmugam and Shri P. Ramalingam both Staff of M/s. Global, in which it was categorically stated by them that the plastic granules imported by M/s. Global were unloaded at the premises of M/s. Priya Mills.
- had failed to consider the contents of the statement dated 15.6.2001 of Shri T. Muralitharan, Managing Director, M/s. Global in which he has admitted that he has given instructions to his staff to store the full or balance stock at 17/2, Perali Road, Virudhunagar, when there was not space in M/s. Global.
- had not considered the admissions made by staff of M/s. Global on 12.6.2001 and by Shri T. Muralitharan, MD, M/s. Global while holding that the admission made by the Security staff about the offending nature of goods as not much of relevance.
- had failed to take into account that M/s. Priya Mills in their reply

dated 12.5.2011 to the show cause notice dated 4.7.2001 had neither claimed the ownership of the plastic granules seized nor claimed the release of seized goods.

- had failed to consider that no documentary evidences in support of their claim that the goods seized were “reprocessed granules” were produced by the noticees either in their replies or during the personal hearings conducted.
- had highlighted the absence of Test result of the samples drawn to justify the dropping of proposal to confiscate the seized goods when other primary documentary evidences were available to sustain the department's case that seized goods were actually imported plastic granules.

As regards SCN dated 26.3.2002:

- had not discussed the evidentiary value of the any of the documents reflected in the Annexures D-1 to D-8 of the said SCN to disprove the department's contention.
- had failed to consider supportive and corroborative evidence such as Bill of Entry No. and date, in which the plastic granules were imported, invoices of the sister concerns of M/s. Global namely M/s. Priya Mills, M/s. Rajalakshmi under which the said imported plastic granules were transshipped/sold to the consignees, the corresponding entries maintained at the buyer's end and also the vehicle Nos. in which the imported plastic granules were transported etc. which are mentioned in the Annexures D-1 to D-5 to the said SCN.
- had failed to consider the entries made in outward registers of M/s. Global and the entries made in inward registers of M/s. Priya Mills which corroborates that imported plastic granules were taken out of the Bonded warehouse of M/s. Global and stored at M/s. Priya Mills.
- had failed to consider the documents recovered/obtained from the premises of M/s. Global, M/s. Priya Mills etc. including the out passes and outward registers of M/s. Global inward registers of M/s. Priya and the other documentary evidences i.e. records/documents which were recovered/obtained from the High Sea Sellers viz. M/s. Alagendran Group of Companies, M/s. Sri Lakosha Polymer (P) Ltd., M/s. Ramya Polymer Agencies (P) Ltd., Madurai, M/s. Seven Seas Polymers (P) Ltd., Karur which indicate that plastic granules imported by M/s. Global through High Sea sellers were resold to them and that plastic granules imported directly by M/s. Global were diverted into local market.
- had failed to observe that in the copies of sales invoices raised by M/s. Priya Mills, the sales effected were mentioned as “Second Sales. No Tax”, though Shri Muralidharan, Managing Director of M/s. Global Poly Bags (P) Limited and Partner of M/s. Priya Mills in his statement dated 15.6.2001 had deposed that M/s. Priya Mills and M/s. Rajalakshmi Mills had not purchased any granules from local market at any point of time and failed to appreciate that in view of the above endorsement the goods cleared under the invoices of M/s. Priya Mills could not have been 'reprocessed granules' but only “virgin plastic materials” imported.

- had failed to consider the relevance of the statements recorded by the Gazetted officers from the persons viz. High Sea (HS) sellers, dealers who purchased imported granules from Global, Managing Director and other employees of M/s. Global Partners of M/s. Priya Mills and from Inspecting Agents of Export Consignments etc. which were recorded under Section 14 of Central Excise Act, 1944 and Section 108 of the Customs Act, 1962, as provided for under Section 138B of Customs Act 1962 and Section 9D of Central Excise Act, 1944.
- had failed to note that the statements recorded were not vitiated in any manner and that the same were not retracted and as such the said statements are relevant during the course of adjudication proceeding under the Customs Act, 1962/Central Excise Act, 1944 and are admissible pieces of evidences.
- had failed to discuss the applicability of statement(s) relied upon in the show cause notice in the adjudication process.
- had failed to consider the documentary evidences in the form of private records maintained by M/s. Global viz. Raw materials issue register, Shift register and Stock register etc. which were relied upon to show that production particulars of finished goods wastes & rejects were manipulated.
- had failed to consider the documentary evidences relied upon in the said SCN viz. the documents collected on 14.5.2001 from M/s. Apoorva Agencies, the Inspecting Agent which include copies of actual purchase orders placed by the buyers of M/s. Global i.e. M/s. Dart, Inspection reports, proforma invoices, stuffing details etc. reflecting the actual weight of the plastic carry bags exported which were relied upon to show that the weight and value of the export consignments were inflated in the export documents like AR-4 etc.
- had failed to consider that the Range Officials who had supervised the export stuffing had selected cartons randomly and had conducted only random checking and weighment of the cartons presented to them for export and that they had only counted the number of cartons meant for export and as such it cannot be said that the gross weight and net weight of the consignments mentioned in the export documents were certified by the Range officials.
- had failed to appreciate the fact that the officers visited the unit on the intelligence that the imported plastic granules were diverted by M/s. Global and had not entertained any suspicion about the inflation of weight and value of export consignments which was noticed at a later date only after extensive scrutiny of voluminous documents.
- had failed to note that no weighment facility to weigh the entire container load within the factory or nearby was available at the relevant time, as admitted by Shri T. Muralitharan, MD of M/s. Global in his statement dated 15.6.2001, which indicate that the gross and net weight of goods exported as mentioned in the export documents could not have been verified/certified by the Range Officers who attended to the export.

- had failed to consider that the sale proceeds said to have been received by M/s. Global for their export consignments were only from the trading firms and not from the actual buyers and as such the realization of sale proceeds by M/s. Global alone cannot be held as sufficient proof to show that the only the quantities mentioned in the export documents were exported to the actual buyer M/s. Dart.
- had failed to take into account that M/s. Global themselves in page 23 of their application filed under Section 127 B of the Customs Act, 1962 with the Settlement Commission had admitted that they had taken advantage of allowance of tolerance limit of + or – 5% in every consignment of export and had diverted some quantities of granules on some occasions and admitted to pay differential duty of Rs. 71,63,397/- and did not confirm any demand of duty to that extent also.
- had failed to note that M/s. Global being an 100% EOU unit were bound by LOP given by the Development Commissioner wherein the goods which are permitted to be manufactured by M/s. Global did not include 'cartons' while holding that cartons meant for export were manufactured by M/s. Global within their factory.
- had failed to note that the annual production capacity of M/s. Global was enhanced to 10230 MT only on 2.1.2001 vide letter F.NO. 19/30/95-EOU-TN dated 2.1.2001 of MEPZ, Chennai prospectively, whereas the period of demand covered in the SCN is from 1.9.1998 to 12.1.2001.
- had not adhered to the time limit specified by Honourable High Court, Madras in it's order dated 11.3.2011 to pass final orders pursuant to the show cause notice issued on 26.3.2002 within a period of four weeks from the date of receipt of the aid order, as the order-in-original in the subject case was passed only on 31.5.2012.
- had failed to comply with the instructions issued in CBEC circular No. 732/48/2003 CX dated 5.8.2003 wherein it was directed that in all such cases where personal hearing have been concluded it is necessary to communicate the decision immediately or within a reasonable time of 5 days and where for certain reasons, the above limit cannot be adhered to in a particular case, the order should be issued within 15 days or at most one month from the date of conclusion of personal hearing in as much as in the instant case though personal hearing were conducted during 3/2011 the order in original was passed only on 31.5.2012 and has taken more than a year for processing/preparing order in original.

Article – II

That Shri V.T.K. Nayanar, Commissioner of Central Excise, Madurai, while ordering the Annual General Transfer orders for 2012 in respect of Superintendents/Inspectors had not followed the norms prescribed by the Chief Commissioner of Central Excise, Coimbatore vide C. No. II/39/63/2911 Estt (CCO) dated 12.4.2012 in certain cases. It is also noticed that the reasons for such deviation were not discussed in the note sheet of the concerned files and no approval from the Chief Commissioner for deviations in the AGT 2012 was obtained as required in the para 2.8 of

the Chief Commissioner of Central Excise, Coimbatore letter C. No. II/39/63/2911 Estt (CCO) dated 12.4.2012.

That Shri V.T.K. Nayanar, Commissioner of Central Excise, Madurai failed to apply for Station Leave in compliance with the provisions of DOPT OM No. 11013/7/94/-Estt.(A) dated 18.5.1994 in view of his travel from Channai to Madurai on 14.5.2012 (Monday) by AI Flight No. AI 671 and Madurai to Chennai sector by AI Flight No. AI 672 on 6.7.2012 (Friday) and 13.7.2012 (Friday). In view of the leave record submitted by the office of the Chief Commissioner of Customs, Coimbatore indicates that Shri V.T.K. Nayanar, Commissioner was not on leave during the periods mentioned herein, and was supposed to be in his Headquarters, Madurai.

Thus Shri V.T.K. Nayanar, Commissioner of Central Excise, Madurai Central Excise Commissionerate had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant in as much as he had violated Central Civil Services (Conduct) Rules, 1964 contravening the provisions of Rules 3(1), (i), (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

By the above acts of commission and omission Shri V.T.K. Nayanar, Commissioner of Central Excise, Madurai have rendered himself liable for penal action under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965.”

2. The applicant requested the 2nd respondent for sending him the relied upon documents with 45 days time to submit the reply to the Charge Memo. The applicant was granted time to file the reply but no documents were forwarded to him. Meanwhile the Inquiry and Presenting Officers were appointed. The applicant sent a request to the 2nd respondent to change the Inquiry Officer, Shri A.K.Roy as the Inquiry Officer was the then Chief Commissioner who recommended to file an appeal in the case against M/s. Global Poly Bags Industries (P) Ltd., before the Hon'ble Supreme Court and as such he was an interested party in the case. But, the inquiry proceedings continued. The applicant submitted a Review petition before the Hon'ble President against the appointment of the Inquiry Officer, Shri A.K. Roy. However, the Inquiry Officer continued with the inquiry proceedings. Now

nearly two years have gone by and it is not known whether the Inquiry Officer has submitted his report to the 2nd respondent or not. The charge sheet had been issued to the applicant on 27.9.2013 i.e. more than 3 years ago. The inquiry proceedings are still pending, because of which the applicant has not been paid the retirement benefits including leave encashment, etc. The applicant is highly aggrieved by the delay in finalizing the disciplinary proceedings and hence this OA has been filed for the following relief:

- “(i) To call for the records leading up to the issue of Annexure A1 and quash the same.
- (ii) To direct the respondents to grant all retirement benefits including leave encashment with interest @ 12% p.a. within a stipulated period.
- (iii) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
- (iv) Grant cost of this O.A.”

3. Learned counsel for the applicant submitted that as regards the first charge the case against M/s. Global Poly Bags Industries Private Limited was adjudicated after complete and proper appreciation of all evidence and the materials on record and his decision was upheld by the CESTAT as well. Applicant had relied upon the judgment of the Division Bench of the Hon'ble High Court of Patna in *Ram Suresh Ram v. Union of India* – 2016 TIOL 727 HC Patna CX, wherein it was held as under:

“Orders passed in quasi-judicial functions by statutory authorities, disciplinary proceeding for misconduct cannot be initiated, much less officer penalized.”

Further under Section 155 of the Customs Act, 1962 there is protection of action taken under the Act. It provides as under:

“(1) No suit, prosecution or other legal proceedings shall lie against the Central or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceedings other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceedings and of the cause thereof, or after the expiration of three months from the accrual of such cases.”

Thus it is maintained that no action can be taken against the applicant in this regard. Also, the Hon'ble Supreme Court in ***Public Prosecutor Madras v. R. Raju & Anr.*** - 1978 (2) ELT (J 410) SCC held that Section 40(2) of the Central Excise Act, 1944 cannot be said to be confined in its operation only to Government servants. The said sub section is applicable to any person against whom suit of proceeding or prosecution shall lie for anything done or ordered to be done under the Act. It does not introduce the test of good faith in relation to the act done. Good faith is one of the aspects of Section 40(1). The provision of Section 155 of the Customs Act is *pari-materia* with the provisions of Section 40 of Central Excise Act, 1944.

4. Further the Hon'ble High Court of Punjab & Haryana in ***Sunil Kumar & Ors. v. CBI*** – 2016 TIOL 295 HC P&H Cus., had held that prosecution in violation of Section 155(2) of the Customs Act is not valid. The Hon'ble High Court of Calcutta in ***Ashok Kumar Singh v. State of West Bengal & Anr.*** - CRR 4062 of 2009 dated 19.6.2016 had held that under Section 40 of Central Excise Act, protection for action taken under the Act is given to the officer. The provision of Section 155(2) of the Customs Act, 1962 lays down that an officer of the Government cannot be prosecuted after expiry of

3 months from the date of accrual of cause of action and without giving previous notice in writing of one month for anything purporting to be done in pursuance of the said Act.

5. The applicant submitted that the OA is filed for quashing the Charge Memo itself as he calls to his assistance the decision of the apex court in *Union of India v. B.V. Gopinath* - (2014) 1 SCC 351 as the Hon'ble Finance Minister has ordered to issue the charge sheet and has approved the charge memo simultaneously which is not in tune with the decision quoted. The applicant has also relied upon the judgment of the apex court in *Union of India v. S.S. Sandhawalia* – (1994) 2 SCC 240 in order to claim interest on the delayed payment of leave encashment.

6. The respondents have filed a reply statement contending that the first Article of Charge relates to a case registered by the Department against M/s. Global Poly Bags Industries (P) Ltd. for diverting manufactured goods to domestic market illegally. The demand raised in the show cause notice to the tune of Rs. 16,13,10,303/- as customs duty and Rs. 4,65,456/- as Central Excise duty was dropped by the applicant. The charge against the applicant was that he committed many lapses in adjudicating the case by not properly appreciating the evidence on record, thereby granting undue favour to M/s. Global Poly Bags. Further with respect to the second charge, the respondents have submitted that the applicant had issued transfer orders in violation of the norms prescribed by the Chief Commissioner, Coimbatore under whom the applicant was directly working and that the applicant had

travelled between Madurai and Chennai by air without applying and getting permission for leaving the station of posting. The applicant committed lapses and failed to maintain absolute integrity, devotion of duty and behaved in a manner unbecoming of a Government servant. The respondents submit that there is no inordinate delay in finalizing the disciplinary proceedings. Whatever delay has occurred was due to administrative reasons and on account of objections raised by the applicant. The principles of natural justice have been followed and the applicant had been afforded the opportunity to defend his case.

7. The demand of custom duty of Rs. 16,13,10,303/- was dropped by the applicant as an adjudicating authority and the charge memo alleged that the findings arrived at by the Commissioner, while adjudicating the case was perverse as the same was not supported by any evidence and was entirely opposed to the whole gamut of evidence adduced and the officer had acted in a manner unduly favouring the party. The respondents submitted that the applicant would be accorded ample opportunity in the departmental proceedings initiated against him and that the conduct of the disciplinary proceedings is in accordance with law and interference by this Tribunal at this stage would be premature. In this regard the respondents have relied upon the judgments of the apex court in *Secretary to Government, Prohibition & Excise Department v. L. Srinivasan* – (1996) 3 SCC 157, *The Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha* – (2012) 11 SCC 565, *Chairman, LIC of India & Ors. v. A. Masilamani* – (2013) 6 SCC 530.

8. The applicant retired from service on 30.9.2013 and since the disciplinary proceedings has started before his superannuation, provisional pension has been authorized by the Pay & Accounts Officer up to the conclusion of the departmental proceeding or final order is passed by the competent authority. Respondents pray for dismissing the OA.

9. Heard Shri C.S.G. Nair, learned counsel for the applicant, Shri S.R.K. Prathap, ACGSC, learned counsel appearing for respondents Nos. 1-5 and Shri Thomas Mathew Nellimoottil, learned counsel appearing for respondent No. 6. Perused the records as well as the argument notes submitted by the parties.

10. The issues carved out are three fold:

i) whether disciplinary action can be taken against an officer on the ground that he had been found to be negligent while discharging quasi-judicial functions?

ii) whether there is delay in conducting the disciplinary proceedings; and

iii) whether the judgment of the apex court in ***B.V. Gopinath*** (supra) would apply to the present case.

11. As regards the first issue the Article I of the Charge Memo mentions that the applicant committed lapses while adjudicating the case against M/s. Global Poly Bags Industries Pvt. Ltd., under the Customs Act, 1962 by

not properly appreciating the evidence on record, thereby granting undue favour to the party to the extent of dropping the demands raised in the show cause notice to the tune of Rs. 16,13,10,303/- of Custom Duty and Rs. 4,65,456/- of Central Excise Duty. The applicant submitted that as per the extant instructions on the subject for the issue of show cause notice demanding more than Rs. 1 crore, prior approval of the Chief Commissioner was required. Accordingly, the Chief Commissioner issued approval vide Annexure A19 but no permission was granted by the 3rd respondent under the provisions of Customs Act to demand Customs duty.

12. The applicant alleges that the show cause notice issued to him itself was issued without authority of law. During the pendency of the said show cause notice M/s. Global Poly Bags Industries Pvt. Ltd. filed a petition before the Hon'ble High Court of Madras wherein the Hon'ble High Court as per order dated 11.3.2011 directed the adjudicating authority to pass final orders in the case within a period of 4 weeks. Accordingly, the applicant adjudicated the case registered against M/s. Global Poly Bags Industries Pvt. Ltd. and on 31.5.2012, relying on available records in a judicious manner and after considering the entire aspects of the case, dropped the demand and released the seized goods. The applicant had submitted a detailed letter to the 3rd respondent regarding the case and the reasons which led to dropping the demands. The order was further reviewed by a Committee under Section 129 D(i) of Customs Act, 1962 wherein a direction was issued it was directed to the 4th respondent to file an appeal before the Customs Excise & Service Tax Appellate Tribunal (CESTAT). In

the appeal the CESTAT upheld the decision taken by the applicant. In this regard the applicant has cited the decision of the High Court of Delhi in ***Union of India v. Harsh Vardhan Chauhan*** – 2011 (270) ELT 364 (Del.), wherein the Hon'ble High Court held as under:

“31. As already noted herein above, the respondent made a representation dated 24.2.2009 to the department challenging the validity of the charge sheet issued against him by bringing a subsequent development to the notice of the department, which development had a very material bearing on the validity of the said charge sheet. The development pointed out by the respondent was that the CESTAT had dismissed the appeal preferred by the department against the adjudicating order dated 31.1.2007 passed by the respondent, which order formed the basis of disciplinary action initiated against the respondent. However, the department chose not to pay any heed to the said representation made by the respondent. In such circumstances, the Tribunal was well-justified in testing the correctness of the charge sheet issued against the respondent.”

The Hon'ble High Court while considering the similar issue had held that since CESTAT did not find any merit on the grounds raised by the department against the adjudicating order passed by the respondent therein and that the respondent therein had correctly appreciated the documentary evidence adduced by the Department, the action of the respondents in issuing a charge sheet against the respondent therein was wholly unjustified. Similar is the position in the present case also as the CESTAT while dismissing the appeal filed by the department held that the adjudicating authority (the applicant herein) tested the case on the touch stone of admissibility as evidence through an indepth inquiry, including the facility of cross-examination as observed by the Settlement Commission. Further the CESTAT held that the adjudicating authority dealt with all the aspects on the basis of materials placed before him in the show cause notice, reply to the show cause notice, deposition in the cross-examination and other relevant materials. Moreover, the High Court of Patna in ***Ram Suresh***

Ram's case (supra) held that orders passed in quasi-judicial functions by statutory authorities, disciplinary proceedings for misconduct cannot be initiated.

13. Section 155 of the Customs Act, 1962 reads thus:

“SECTION 155. Protection of action taken under the Act. - (1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.”

The apex court in **R. Raju's** case (supra) held that Section 40(2) of the Central Excise Act, 1944 cannot be said to be confined in its operation only to Government servants. The said sub section is applicable to any person against whom suit of proceeding or prosecution shall lie for anything done or ordered to be done under the Act. The provision of Section 155 of the Customs Act is *pari-materia* with the provisions of Section 40 of Central Excise Act, 1944. While considering Section 155 of the Customs Act, 1962, the Calcutta High Court in **Ashok Kumar Singh's** case (supra) held that under Section 40 of Central Excise Act, protection of action taken under the Act is given to the officer. The provision of Section 155(2) of the Customs Act, 1962 lays down that an officer of the Government cannot be prosecuted after expiry of 3 months from the date of accrual of cause of action and without giving previous notice in writing of one month for anything purporting to be done in pursuance of the said Act.

14. Therefore, testing the above decisions with the case in hand we find that once the order had been passed as a part of a quasi-judicial function by the applicant which incidentally had been upheld by the CESTAT, disciplinary proceeding for misconduct cannot be initiated against the applicant.

15. With regard to the second issue of interminable delay in the conduct of the proceedings, we find that the applicant passed the order in original on 31.5.2012 and the CESTAT upheld the order in original passed by the applicant on 28.10.2014. The charge sheet was issued to the applicant on 27th September, 2013 just three days before his date of superannuation. As per the reply statement filed by the respondents they contend that the inquiry proceedings were initiated on 6.1.2014 with the appointment of the inquiry officer. However, the said inquiry officer was changed due to administrative reasons and another inquiry officer was appointed on 8.10.2014 who submitted his report on 7.1.2015. However, the respondents decided to initiate fresh inquiry proceedings and appointed yet another inquiry officer in February, 2017. The inquiry officer submitted his report on 29.11.2018 and the report is believed to be now under consideration of the disciplinary authority. The applicant has relied on the decision of the apex court in *P.V. Mahadevan v. MD, T.N. Housing Board* – (2005) 6 SCC 636 wherein it is held that departmental enquiry – delay in initiation of – Charge Memo issued against him was quashed and the departmental

enquiry closed. In *State of A.P. v. N. Radhakishan* – (1998) 4 SCC 154 the apex court held that in a departmental enquiry – unexplained delay in conclusion of the proceedings, itself is an indication of prejudice caused to the employee. In the present case also the enquiry proceedings have yet not been concluded till date even though the Charge Sheet was issued to the applicant on 28.10.2014. The respondents have utilised the time to change the inquiry officer one after the other stating administrative reasons. However, till date they have not concluded the inquiry proceedings.

16. In terms of notification No.GSR 548 (E) dated 02.06.2017, *the Inquiry Authority should conclude the inquiry and submit his report within 6 months from the date of receipt of order of his appointment. An additional time not exceeding six months for completing the inquiry can be allowed at a time on the basis of sufficient and good reasons, to be recorded in writing by Disciplinary Authority [Sub-rule (24) in Rule 14 of CCS (CCA) Rules, 1965].* The inquiry proceedings had been initiated on 06.01.2014 with the appointment of Inquiry Officer and admittedly it is not concluded. Thus the charge raised by the applicant of unacceptable delay in the conduct of proceeding against him is found to be valid.

17. Lastly as regards the third issue we find that the apex court in *B.V. Gopinath* 's case (supra) had held as under:

“40. [Article 311\(1\)](#) of the Constitution of India ensures that no person who is a member of a civil service of the Union or an all India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of [Article 311\(1\)](#) for the civil administration as well as the public servant has been considered stated and re- stated, by this Court in numerous judgments,

since the Constitution came into effect on 19th January, 1950. [Article 311\(2\)](#) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in [Article 311\(1\)](#) and to ensure compliance with the mandatory requirements of [Article 311\(2\)](#), the Government of India has promulgated CCS (CCA) Rules, 1965.

41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under [Article 311\(1\)](#) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under [Article 311\(2\)](#) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

42. In fact, issuance of the office order No.205 dated 19th July, 2005 makes it evident that the respondents were aware of the legal position. The office order clearly sets out the levels of the decision making authorities depending on the gravity of the consequences that would have to be faced by a delinquent public servant in case the decision is taken to proceed against the public servant. Clause (1) deals with closure of complaints which are anonymous/pseudonymous; if the decision is taken to close the complaint it can be taken by the CVO. But in case of verifiable facts, the complaints have to be referred to the next level of hierarchy CVB (Central Vigilance Bureau). For placing an officer under suspension, the decision has to be taken by the Finance Minister himself. Even review of suspension at quarterly/half yearly interval rests with the Finance Minister. This is so, as suspension during contemplation/pendency of enquiry, though may not be penal in nature per se, still has very serious adverse consequences on the professional as well as the personal life of the officer suspended. The office order recognizing the gravity of the consequences ensures that the decision in relation to suspension/review of suspension shall be taken by the highest authority in the department i.e. the Finance Minister. In matters related to reference to CVC for first stage advice, the competent authority is the Secretary (Revenue). Similarly, for reconsideration of CVC's first stage advice, again the competent authority is the Secretary (Revenue), but in case of disagreement with CVC's first stage advice on approval for referring the case to Department of Personal and Training, the competent authority is the Finance Minister.

43. Clause (8) of the Circular makes it abundantly clear that it relates to approval for issuing charge memo/sanction of prosecution. A plain reading of the aforesaid clause shows that it relates to a decision to be taken by the disciplinary authority as to whether the departmental proceedings are to be

initiated or prosecution is to be sanctioned or both are to commence simultaneously. The competent authority for approval of the charge memo is clearly the Finance Minister. There is no second authority specified in the order. We do not agree with Ms. Indira Jaising, learned Additional Solicitor General that the use of the word “approval of” is not an expression distinct from “approval for” initiating major penalty proceedings.

44. Under Clause (9), the department firstly puts up the file before the Finance Minister seeking “approval for issuing charge memo/sanction of prosecution.” The department is seeking an order as to whether the officer is to be proceeded against departmentally or criminal proceedings are to be initiated or both proceedings are to be commenced simultaneously. When the decision is taken by the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of charge memo arises. The department would thereafter complete the necessary formalities and then place the file before the Finance Minister, for “approval of” charge memo. This provision is in harmony with the mandate contained under Articles 311(1) and (2) that no civil servant shall be dismissed or removed by an authority subordinating to that by which he was appointed. The second limb of the same direction is that punishment on a public servant of dismissal, removal or reduction in rank can only be imposed when the charges have been proved against him in a departmental enquiry held in accordance with the rules of natural justice.

(emphasis supplied)

45. Rule 14 of the CCS (CCA) Rules provides for holding a departmental enquiry in accordance with the provisions contained in Article 311(2) of the Constitution of India. Clause (8) also makes it clear that when the Finance Minister is approached for approval of charge memo, approval for taking ancillary action such as appointing an inquiry officer/presiding officer should also be taken. Clause (9) in fact reinforces the provisions in clause (8) to the effect that it is the Finance Minister, who is required to approve the charge memo. Clause (9) relates to a stage after the issuance of charge sheet and when the charge sheeted officer has submitted the statement of defence. It provides that in case the charge sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial accompanied by representation, the Chairman is to consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has pointed out certain issues which may require modification/amendment of charges then the file has to be put up to the Finance Minister. So the intention is clearly manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister.”

18. The Hon'ble apex court in *B.V. Gopinath* 's case (supra) very categorically explained the rule position and held that Under Clause (9), the department firstly puts up the file before the Competent Authority, in this case the Finance Minister seeking approval for issuing charge

memo/sanction of prosecution. By this the department is seeking an order as to whether the officer is to be proceeded against departmentally or criminal proceedings are to be initiated or both proceedings are to be commenced simultaneously. When the decision is taken by the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of charge memo arises. The department would thereafter complete the necessary formalities and then place the file before the Finance Minister, for “approval of” charge memo. This provision is in harmony with the mandate contained under Articles 311(1) and (2) that no civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. In the present case, we wish to extract the relevant portion of the note sheet placed before the Finance Minister i.e. the disciplinary authority herein. It reads thus:

“8. In view of the above, the file is submitted for seeking approval of Hon'ble FM as disciplinary authority for initiation of the departmental proceedings for major penalty against Shri V.T.K. Nayanar, Commissioner of Central Excise, Madurai, as per draft charge sheet placed below. Since Shri V.T.K. Nayanar, Commissioner of Central Excise, Madurai, is due to retire on 30.9.2013 on attaining the age of superannuation, a charge sheet is required to be issued to him before 30.9.2013 lest the charge of violating CBEC norms regarding transfer against the CO does not become time barred.” (emphasis supplied)

The Finance Minister i.e. the disciplinary authority, signed the note without giving any comments. We find that the department was hastening to initiate the departmental proceedings against the applicant as well as to issue the charge sheet as the applicant was going to retire on 30.9.2013 on attaining the age of superannuation. The respondents took approval of the disciplinary authority for initiation of the departmental proceedings for major penalty as the approval of the draft charge sheet itself. This

according to the judgment of the apex court in **B.V. Gopinath** 's case (supra) is not permissible. The respondents have to firstly place the file for approval of the disciplinary authority (Finance Minister in this case) for initiation of the departmental proceedings and when the decision is taken by the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of Charge Memo arises. This principle has been clearly ignored by the disciplinary authority thereby vitiating the subsequent proceedings.

19. Taking stock of the entire material available on record, we are of the view that the charge sheet is *non est* in the eyes of law and is liable to be quashed and set aside. Accordingly, Annexure A1 is quashed and set aside. The applicant is entitled to all consequential benefits except for the claim of interest. The above benefits are to be disbursed to the applicant within 60 days of receipt of copy of this order.

20. The Original Application is allowed as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA/SD”

Original Application No. 180/01078/2016**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of charge memo F. No. C-14011/38/2013 Ad.V dt. 27.9.2013.
- Annexure A2** - True copy of the letter dt. 30.9.2013 addressed to the 2nd respondent.
- Annexure A3** - True copy of the letter F. No. C/14011/38/2013 Ad.V dt. 9.10.2013.
- Annexure A4** - True copy of the letter No. II/39/87/13 A3 B1 dt. 5.12.2013 issued by the Commissioner of Central Excise Bangalore enclosing a copy of the 2nd respondent's letter dt. 28.10.2013 granting 10 more days time for the reply to the Show Cause Notice.
- Annexure A5** - True copy of the letter dt. 5.12.2013.
- Annexure A6** - True copy of the letter F. No. Misc. 64/2003/Pt.II dt. 22.1.2014 issued by the Customs House, Chennai along with the appointment orders.
- Annexure A7** - True copy of the order F.No. C.14011/38/2013 Ad.V. dt. 8.10.2014 issued by the 2nd respondent.
- Annexure A8** - True copy of the letter dt. 11.12.2014 to the 2nd respondent.
- Annexure A9** - True copy of the letter dt. 11.12.2014.
- Annexure A10** - True copy of the Review Petition dt. 17.12.2014.
- Annexure A11** - True copy of the OM dt. 9.11.1972 issued by the Cabinet Secretariat.
- Annexure A12** - True copy of the letter dt. 1.1.2015.
- Annexure A13** - True copy of the letter C. No. AKR/10/14 dt. 12.12.2014 issued by the Inquiry Officer.

- Annexure A14** - True copy of the letter F. No. Misc/JC/22/2014-Air dt. 15.12.2014.
- Annexure A15** - True copy of the letter dt. 7.1.2015.
- Annexure A16** - True copy of the letter dt. 23.12.2014 along with its enclosures.
- Annexure A17** - True copy of the OM No. 18019/6/2013-Estt(L) dt. 21.10.2013 issued by the DOPT.
- Annexure A18** - True copy of the letter No. V/39/15/269/2001 dt. 11.2.2002.
- Annexure A19** - True copy of the letter No. C. No. V/39/15/61 MDU/2002-CZO dt. 8.3.2002.
- Annexure A20** - True copy of the reply to the show cause notice was submitted by M/s. Global Poly Bags Industries Pvt. Ltd.
- Annexure A21** - True copy of the order in original NO. 1/2012 (Customs) dt. 31.5.2012.
- Annexure A22** - True copy of the letter No. II/39/10/2012 Vig. dt. 19.10.2012.
- Annexure A23** - True copy of the letter C. No. IV/16/223/2012-Review dt. 1.11.2012.
- Annexure A24** - True copy of the order in appeal No. 40670-41688/2014 dt. 28.10.2014.
- Annexure A25** - True copy of the letter C. No. II/39/49/2011-Vig(CCO) dt. 13.6.2012 issued by the 3rd respondent.
- Annexure A26** - True copy of the reply C. No. II/39/7/2012 Vig. dt. 14.8.2012.
- Annexure A27** - True copy of the letter No. II/39/02/2013 Vig. dt. 5.6.2013.
- Annexure A28** - True copy of the officer order No. 36/07/2003

dt. 9.7.2003 issued by the 5th respondent.

- Annexure A29(a), (b), (c), (d), (e) and (f)**- True copy of the office memorandums having the same numbers i.e. 372/3/2007 AVD.III(Vol.10) dt. 14.10.2013 issued by the DOPT and published in Swamynews for the month of December, 2013 serially numbered as 222, 223, 224, 225, 226 and 227.
- Annexure A30** - True copy of the circular C. No. 11/39/63/2011-Estt(CCO) dt. 12.4.2012 issued by the 3rd respondent.
- Annexure A31** - True copy of the OM No. 104/76/2011-AVD-I dt. 18.10.2013 issued by the DOPT.
- Annexure A32** - True copy of the circular No. C-14010/5/2011 Ad.V dt. 24.2.2011.
- Annexure A33** - True copy of the appeal along with the relevant documents.
- Annexure A34** - True copy of the order NO. CIC8/CBECE/A/2017/128812-BJ dt. 10.8.2017.
- Annexure A35** - True copy of the letter No. F. No. 11015/101/2016-Ad.V/7114 dt. 8.9.2017 along with typed copies of note sheets.
- Annexure A36** - True copy of the RTI question dt. 14.1.2015.
- Annexure A37** - True copy of the RTI reply dt. 17.2.2015.
- Annexure A38** - True copy of the letter to the Hon'ble Finance Minister dt. 7.1.2015.
- Annexure A39** - True copy of the appointment order No. C.14011/38/2013-Ad.V dt. 1.3.2017.
- Annexure A40** - True copy of the RTI questions.
- Annexure A41** - True copy of the RTI reply.

Annexure A42 - True copy of the appeal dt. 15.11.2018.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the letter C. No. II/39/63/2011 Estt. (CCO) dated 12.4.2012.

Annexure R2 - True copy of the circular No. 39/11/07 dated 1.11.2007.

Annexure MA-2 - True copy of order dated 15.02.2018 in MA No. 183 of 2018 in OA No. 1078 of 2016 of this Hon'ble Tribunal.

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