Central Administrative Tribunal
Principal Bench

O.A. No.1931/2003

New Delhi this the 13th day of November, 2003

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri Rajan Suri, Q.R(A)
Additional Commissioner
Central Excise & Customs,
R/o 1, Type-V (old),
Central Revenue Colony,
Vani Vihar, Bhubaneshwar,
Orissa- 751007.

-Applicant

(By Advocate: Shri Prabhjit Jauhar)

Versius

1. Union of India, through
   Secretary (Revenue),
   Department of Revenue,
   Ministry of Finance,
   North Block, New Delhi-110 002.

2. Chairman,
   Central Board of Excise & Customs,
   Department of Revenue,
   Ministry of Finance, North Block,
   New Delhi-110 002.

3. Shri V.P. Arora,
   Under Secretary (Ad-V),
   Department of Revenue,
   Ministry of Finance, North Block,
   New Delhi-110 002.

-Respondents

(By Advocate: Shri Satyender Kumar, proxy for
Shri R.V. Sinha)

ORDER (Oral)

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Applicant has challenged Annexure A-1 dated 9.4.2003 whereby Central Board of Excise & Customs has initiated disciplinary proceedings against the applicant under Rule 16(1)(b) of the CCS(CCA) Rules, 1965. It has been alleged in this Memorandum as follows:-

"Shri Rajan Suri, while working as Assistant Collector (Redesigned as Assistant Commissioner), Customs (Review), Customs & Central Excise, Jaipur holding additional charge of Assistant Collector of Customs, ICD, Jaipur during the year 1993 failed to discharge his duty with utmost devotion and diligence and committed gross misconduct in as much as:-

That he while working as above, has assessed the valuse of the export consignment of reclaimed lube oil manufactured out of waste lube oil imported duty free presented by M/s Vibhuti Exports, Jaipur under Shipping Bill No. 791 dated 26.11.93 and had passed the order of "Let Export" on this Shipping Bill. Accordingly, the consignment under this Shipping bill was sailed out. Under this shipping bill 840 barrels of reclaimed lube oil weighing 16800 Kgs, i.e., each barrel of 20 Kgs, were exported under his orders, whereas each barrel to be exported was required to be of 44 British Gallons Capacity (Equivalent to 200 Kgs, approx.) as laid down in the terms and conditions of the respective advance licence No.1535025 dated 26.02.93. The valuation of the consignment so exported under this shipping bill was assessed by the said Shri Rajan Suri as US $ 63000 equivalent to Indian Rs.19,70,010/- which is the cost of 840 barrels of 44 British Gallons capacity i.e. approximately 1,68,000 Kgs, (840 barrels X 200 Kgs) and not of the 840 barrels weighing 16,800 Kg. which was actually exported.

And he thereby violated Rule 3(1)(ii) & (iii) of the Central Civil Services (Conduct) Rules, 1964".

2. Applicant has sought quashing of the impugned Memorandum/charge sheet with a direction to the respondents to grant all consequential benefits.

3. Learned counsel of the applicant contended that applicant had joined Indian Customs & Central Excise Service Group-A on 7.9.1983. He was promoted

to the rank of Additional Commissioner on 6.6.2000 and is presently eligible for consideration for promotion to the grade of Commissioner, Customs and Central Excise, when respondents have decided to initiate disciplinary proceedings against the applicant through Annexure A-1 which prejudices his career progression.

4. Learned counsel of the applicant raised the following contentions against departmental action against the applicant:-

1) While the incident relating to the charge occurred on 26.11.1993, the impugned Memorandum has been issued after an inordinate delay of a decade. Delay per se is not bad but it has to be satisfactorily explained. Respondents have not explained the inordinate delay. Unexplained inordinate delay has prejudiced the applicant, particularly when he is on the threshold of next promotion to the grade of Commissioner.

2) The applicant had passed the "Let Export Order" in his quasi judicial capacity and no charge of any extraneous consideration and undue favour has been alleged against the applicant vide the impugned Memorandum.

3) The "Let Export Order" passed by the

applicant on 26.11.93 is subject to review jurisdiction within one year from the passing of the same by the Collector (now Commissioner). As no review order had been passed within the stipulated period of one year, it had attained finality and the same cannot be questioned now by some other authority after a lapse of 10 years.

5. Learned counsel has relied on the following in support of his contentions stated above:-

1. **P.V. Mahashabdey Vs. Delhi Development Authority & Ors.** 103 (2003) Delhi Law Times 88 decided on 3.1.2003 by Delhi High Court.

2. **Suntex Private Limited Vs. Collector of Customs, Cochin** 1987 (XC2)-GJX-0458-TRIB) decided on May 14, 1987 by CEGAT, South Regional Bench, Madras.

3. **Z.B. Nagarkar Vs. Union of India and others** (1999) 7 SCC 409.

4. **Union of India Vs. Dolly Saxena,** CWP No.2710/2000 decided by Delhi High Court on 30.7.2001.

5. **Collector of Customs Vs. M/s. Shilpi Export,** 2000 (115) ELT A219.

6. **State of A.P. Vs. N.Radhakishan** 1998 (4) SCC 154.

7. **Parker Leather Export Co. Vs. Collector** 1986(XC2) GJX-0458-TRIB.

6. Opposing the contentions of the learned counsel of applicant, learned counsel for respondents submitted that the OA is premature inasmuch as the

applicant has challenged the charge sheet issued in accordance with relevant rules and instructions and settled law. He then stated in respect of delay in issuing the impugned Memorandum after 10 years of the occurrence that the misconduct of the applicant came to the notice of the respondents through CBI who submitted its report and recommendations on 10.10.2001. The case was referred to CVC for mandatory advice who advised on 6.1.2003 for initiation of minor penalty proceedings against the applicant among other officers. As such, he contended that the delay has not been undue.

7. Learned counsel of the respondents next pleaded that the Let Export Order is not a quasi judicial order. The Shipping Bill was filed by the party before the Inspector of Customs who after satisfying himself with the goods declared in shipping bill forwarded the same to his superior officer. The inspector is not the authority to appraise the value. The value was supposed to be appraised by Appraiser but the applicant in the present case, in the absence of Appraiser, appraised the value. He was guilty of gross negligence and recklessness.

8. As regards the claim of the applicant that assessment made by him had become final, learned counsel of the respondents stated that after the DRI booked a case and started enquiry, the party deposited the amount of duty evaded. This proves that the party tried to evade duty through fraudulent export, and

once caught, tried to undo it by despoiting the dutv. According to the learned counsel, this also proves that the assessment did not reach finality.

9. Learned counsel of the respondents in support of his contentions relied on the following:-

1. **FCI & Ors. Vs. V.P. Bhatia**, 1998 (9) SCC 131.

2. **Additional Supdt. of Police Vs. J. Natrajan**, 1998 (9) JT-254.

3. **S.C. Chadha Vs. Union of India & Ors.** 2002(61) DRJ 845-(DB)

4. **U.O.I. Vs. Upender Singh.** JT-1994(1) SC 658.

5. **U.O.I. & Ors. Vs. A.N. Saxena.** (1992)3-SCC-124.

6. **U.O.I. & Ors. Vs. K.K. Dhawan.** (1993)2 SCC 56.

10. We have carefully considered the rival contentions of learned counsel of both sides.

11. As regards the issue of delay in issuing the impugned memorandum, there is no denying the fact by the respondents that while the occurrence forming the basis for the charges against the applicant related to 1993, the charge sheet has been issued after a period of 10 years. Thus, the burden is on the respondents to explain the inordinate delay caused in issuing the impugned memorandum to the applicant. We are concious that delay per se does not vitiate the disciplinary proceedings. It is only when the same is inordinate and unexplained that causes prejudice to the applicant. The applicant faces lot of difficulty

in defending a charge pertaining to an occurrence of a decade ago. The Apex court has held in **State of A.P. Vs. N. Radhakishan** 1998 (4) SCC 154 that delay causes prejudice unless it is shown that delay is attributable to the delinquent or proper explanation for delay has not come forth. In the present case, according to respondents the misconduct of the applicant came to the notice of the CBI six years after the event. The CBI took two years thereafter to submit its report and apart from the time taken by the Department, the Chief Vigilance Commissioner also took one year's time to make its recommendations. Respondents have not at all established that the delay was attributable to the delinquent. Whereas the review of an assessment is permissible within one year in terms of Section-129 (D) of the Customs Act, 1962, the same was not done within the stipulated period. The explanation rendered on behalf of the respondents for delay is not at all satisfactory. Unexplained delay of about 10 years establishes that the respondents have not acted with due despatch but allowed the matter to languish as they have. Such a delay is not only inordinate but also culpable. It is inexcuseable and borders on being mala fide in law. These observations are supported by the ratio in the case of **P.V. Mahashabdey**(supra). The facts of the case of **FCI** (supra) are distinguishable. The ratio thereof is not applicable to the present case. In that case while the event related to 1986 the process had been completed by CBI, CVC and the Government within a period of four years and the charge sheet was

issued to the delinquent employees. In that case 69 documents and 44 witnesses were involved. In the present case, much longer period has been taken by respondents in reaching the stage of issuing the charge sheet while the alleged misconduct does not involve a large number of documents and witnesses and the delay has not been attributed to the delinquent. Respondents cannot derive any benefit from this case. In the case of **Additional Superintendent of Police and another Vs. T. Natarajan**, it was held that mere delay in initiating proceedings would not vitiate the enqiry unless the delay results in prejudice to the delinquent officer. In the present case, while inordinate unexplained delay not attributed to the applicant has been caused by the respondents themselves, at a juncture when the applicant is about to be considered for promotion, the delay is certainly causing prejudice to the applicant. This case too is easily distinguishable. In the case of **S.C. Chadha** (supra), delay had been explained and justified. In the present case, delay has gone unexplained and become fatal at the present juncture of applicant's career.

12. From the above discussion, on the issue of delay we find that respondents have not been able to explain satisfactorily the delay of 10 years in initiating the disciplinary proceedings against applicant. This delay is not attributable to the applicant and has certainly prejudiced the applicant. The rulings cited on behalf of the respondents do not

lend enough support to the contentions of the respondents.

13. So far as the contention raised on behalf of the applicant that the applicant had made the 'Let Export Order' on 26.11.1993 in his quasi judicial capacity, the respondents have denied that the said order was passed in his quasi judicial capacity. In this connection, learned counsel of applicant has relied on the case of **Parkar Leather Export Co.**(supra) and **Suntex Private Limited** (supra). Learned counsel of the applicant stated that applicant had passed the order in question in the exercise of his powers conferred under Section 47/51 of the Customs Act. It was held in the case of **Parkar Leather Export** (supra) that while Collector of Customs can review the order, the order passed by the proper officer in exercise of powers under the Act is an order adjudication. Therefore, the Let Export Order given by the proper officer is in exercise of a quasi-judicial power in adjudication by a proper officer and interferred with the Collector of Customs only in terms Section 129(2) of the Act. In the case of **Suntex Private Limited** (supra), two imported consignments of fabrics under an import licence were duly assessed by the customs authorities. It was held that orders passed in terms of Section 47 of the Act are orders of adjudication in law which can be modified or revised only in a manner known to law. It was held to be the only course open in terms of Section 129D of the Act. This legal position was held to be no longer res integra. In the

case of **Nagarkar** (supra), it was held that unless the wrong interpretation of law is deliberate and actuated by mala fide, it cannot be a ground for misconduct. In the case of **Doli Saxena** (supra) it was held that mere charge of negligence or recklessness against an officer passing an adjudicatory order in exercise of quasi judicial functions without any further charge of extraneous consideration cannot justify the initiation of disciplinary proceedings. Respondents have relied upon **A.N. Saxena** (supra) to state that disciplinary proceedings can be initiated against an Income Tax Officer in terms of the charges. In that case the delinquent had allowed an officer to retire voluntarily under Fundamental Rule-56(K) though a disciplinary enquiry pertaining to serious charges was pending against him. In that case it was held that "where the actions of such an officer indicate culpability namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken". In the case of **K.K. Dhawan** too, the charge in question was completion of income tax assessments in irregular and hasty manner with a view to confer undue favour upon assessees without maintaining absolute integrity and devotion to duty. The respondents shall not be able to derive any support from these citations as disciplinary proceedings can be initiated against judicial/quasi judicial functions only if the actions of the concerned indicate any mala fide action or passing of undue favour to others. In the present case, there is

no whisper about any extraneous consideration or mala fides against the applicant. The cases of **Nagarkar** and **Doli Saxena** (supra), support the case of the applicant who had exercised quasi judicial functions and no charge of extraneous consideration or mala fide has been levelled against him by the respondents. In this view, applicant who is a quasi judicial authority in terms of rulings in the **Parkar Leather Export and Suntex Private Limited** (supra), could not have been proceeded against in disciplinary proceedings in the absence of any mala fide intentions or passing of undue favours to others.

14. It has been stated on behalf of the applicant that the 'Let Export Order' in question had attained finality and the same had not been reviewed within the stipulated period of one year. The applicant had passed these orders under Section-47/51 of the Customs Act. These orders are reviewable under Section-129(D) within a period of one year. The contention put forward on behalf of the applicant is that as the assessment made by the applicant had not been reviewed within the stipulated period, the assessment had attained finality. The decision of the Apex Court in **Collector of Customs Vs. M/s Shilpi Export,** 2000 (115) ELT A219 supports this contention. The orders passed by the applicant could be interfered with the Collector of Customs only in terms of Section-129(D)(2) of the Act. As stated above, no mala fides or passing of undue favours to the party concerned have been attributed to the applicant. It

has also been admitted by the respondents that the concerned party had deposited the amount of duty which was allegedly evaded. It cannnot be infered from this that the assessment had been made wrongly and had not reached finality.

15. On behalf of the respondents reference has been made to the cases of **Upender Singh** (supra) in which it was held that disciplinary action can be taken in certain cases. On examination, we find that the present case does not fall in any of those categories.

16. In the facts and circusmstances of the case as discussed above, here is a case in which respondents had no good grounds to initiate disciplinary proccedings against the applicant after an inordinate delay of 10 years after the occurrence. Accordingly, the OA is allowed and the impugned Memorandum dated 9.4.2003 is quashed and set aside with all cosnsequential benefits in accordance with law, rules and instructions.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Vice-Chairman (A)

cc.