

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION Nos.304 & 196 of 2012

Dated this , the 23rd day of October , 2019

**CORAM: R. VIJAYKUMAR, MEMBER (ADMINISTRATIVE)
R.N. SINGH, MEMBER (JUDICIAL)**

Shri K. Ramamurthy, Age 52 years,
Superintendent of Central Excise,
Residing at C-12, Jay Rameshwar Darshan Katrap,
Badalapur (E), Dist. Thane 421 503. ... *Applicant in OA No.304/2012*

Shri Jawaharlal Pandey, Age 50 years,
Working as Inspector of Central Excise,
Residing at D-1/103, Mallikarjuna Madhav Shrushti,
Near Godrej Hill, Khadakpada,
Kalyan (East), Thane. ... *Applicant in OA No.196/2012*

(By Advocate Shri S.V.Marne)

Versus

1. Union of India, Through the Secretary, Ministry of Finance,
Department of Revenue, Central Board of Excise & Customs,
North Block, New Delhi 110 001.
2. The Chief Commissioner of Central Excise, Mumbai Zone I,
111, M.K. Road, Churchgate, Mumbai 400 020.
3. The Commissioner of Central Excise, Mumbai Zone I,
Central Excise Building, M.K. Road, Churchgate,
Mumbai 400 020. ... *Respondents in all the OAs*

(By Advocate Shri R.R.Shetty and Shri V.B.Joshi)

Reserved on 25.06.2019

Pronounced on 23.10.2019

ORDER

Per : R.Vijaykumar, Member (Administrative)

OA No.304/2012 has been filed on 28.03.2012 and OA No.196/2012 has been filed on 14.03.2012 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following common reliefs :

"8.a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned orders dated 09.11.2010 of Disciplinary Authority and 29.12.2011 of the Appellate Authority with all consequential benefits. (Relief in OA No.196/2012)

8.a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned orders dated 09.11.2010 of Disciplinary Authority and 04-01-2012 of the Appellate Authority with all consequential benefits. (Relief in OA No.304/2012)

8.b. Costs of the application be provided for.

8.c. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant in OA No.304/2012 commenced service with the respondents as Inspector of Central Excise in 1982 and was promoted as Superintendent on 24.09.2002 and was serving as Superintendent of Central Excise in Range I, Kalyan Division during May, 2007 which was the period in question when the applicant was detected with alleged delinquencies in his work and after inquiry, orders were passed by the Disciplinary Authority on 09.11.2010 reducing his pay to the lowest stage of the time scale of pay by two stages for a period of two years with further directions that he would not earn increment of pay during the period of such reduction of his pay and on expiry of such period, the reduction will have the effect of

postponing future increments of his pay. The applicant's appeal dated 06.12.2010 was considered and orders passed by the Appellate Authority in orders dated 04.01.2012 upholding the punishment while agreeing with the Disciplinary Authority that the Article of Charges I, II, III and IV were proven against the applicant and by dropping the Article of Charge V as not proven although previously upheld by the Disciplinary Authority. These orders followed upon the issue of a charge memorandum to the applicant in file No.II/10A-3/Vig./Th-I/07/515 dated 11.08.2008 with the following Articles of Charge:

"Article of Charge-I: He, while being posted and functioning as Superintendent of Central Excise, Range-I, Kalyan-I Division, had discharged his duties in such a manner with resulted in loss of Govt. revenue and thus acted with doubtful integrity and with an ulterior motive to unduly favour M/s Goel Airshrink (India) Ltd. (M/s GAIL in short), Bhoir Compound, Val Village, Behind Hotel Shivkrupa, Anjur Road, Bhiwandi, at the cost of the Exchequer. He examined the export stuffing and falsely gave the examination certificate as correct, without properly examining the facts mentioned therein, a certified by him, and in a negligent and careless manner and this facilitated M/S GAIL to evade payment of Customs Duty on imported inputs/goods, to wrongly avail the exemption notification no.93/2004-Cus dtd. 10.09.2004, to contravene the provisions of Customs Act, 1962, the provisions of EXIM Policy (Import and Export Policy and Hand Book of Procedure 2002-07), the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules, 1993. Had he carefully examined the report consignments considering the examination report as certified by him, there were a possibility that the attempt of M/S GAIL to evade payment of Customs Duty and their other transgression could have been unravelled/ unearthed at least during his tenure at the initial stages.

Article of Charge – II: He has carried out the examination of export stuffing without due care and attention and with gross irregularity and in gross negligence in discharge of his official duties with a honest motive in accordance with the various instructions issued by the Board (CBEC), Model Examination Order given by Customs Department and thus helped M/s Goel Airshrink (India) Ltd in evasion of customs duty.

Article of Charge – III: He has failed to give true and correct statement before the officers of DRI, Mumbai during recording of his statements under Section 108 of Customs Act, 1962 as well as before the Superintendent of (Vigilance), Thane-I under Central Vigilance Manual and gave misleading, false statement and thus failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant.

Article of Charge – IV: He has failed to conduct and maintain proper supervision on the functioning of his subordinate officers and also failed to take all possible steps to ensure their integrity and devotion of duty who were for the time being under his control and authority, while he was posted as Superintendent Central Excise Range-I, Kalyan-I Division from December 2006 to July 2007.

Article of Charge V: He failed to give the written orders/directions to the subordinates of written confirmation of the directions/orders if given to the subordinate officer orally to attend to the examination /supervision of export consignment (exported under Advance licence/ Duly Exemption scheme/ DFIA etc). Thus he contravened the Rule 3(2)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article of Charge VI: He, while functioning as Superintendent of Central Excise, Range-I, Kalyan-I Dn, has failed to maintain his XT-1 diary properly and did not mention the details of the containers examined by him in his XT-1 diary.

By the above acts of omission and commission, Shri K. Ramamurthy, the then Superintendent of Central Excise, Range-I, Division Kalyan-I, failed to maintain absolute integrity, exhibited lack of devotion to duty, acted in a manner unbecoming of a Government servant, and also failed to take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being posted under his control and authority and thereby violated the provisions of Rule 3(1)(i), 3(1)(ii), 3(1)(iii), 3(2)(i) and 3(2)(iii) of the C.C.S. (Conduct) Rules, 1964.”

3. The applicant in OA No.196/2012 commenced service with the respondents as Inspector of Central Excise on 29.06.1989 and in May 2007, he was employed under the supervision of applicant in OA No.304/2012 as Inspector of Central Excise, Range-I, Kalyan Division. In May 2007, in relation to the same alleged delinquencies as the previous applicant, charges were framed against this applicant and after inquiry, the Disciplinary Authority held that in all the five Articles of Charge, the Articles of Charge I, II, IV and V were proved, and imposed the penalty of reducing his pay to the lowest stage of time scale of pay by two stages for a period of two years with further direction that he would not earn increments of pay during the period of such reduction on his pay and on expiry of such period, the reduction will have the effect of postponing future increments on his pay.

4. The applicant filed his appeal on 29.12.2010 and the Appellate Authority passed orders upholding the Articles of Charge I, II and IV while dropping Article of Charge V and agreeing with the Disciplinary Authority for dropping Article of Charge III. He, thereafter

confirmed the penalty imposed by the Disciplinary Authority. These proceedings were based on the Charge Memorandum issued to the applicant in file No.II/10A-3/Vig/Th-I/07/569 to 572 dated 21.08.2008 which records the following Articles of Charge:

“Shri J.L.Pandey, while posted and functioning as Inspector Commissionerate of Central Excise, Range I, Kalyan-I Division failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant in as much as:

Article of Charge – I: He while being posted and functioning as Inspector of Central Excise, Range – I, Kalyan – I Division, had discharged his duties in such a manner which resulted in loss of Govt. revenue and thus acted with doubtful integrity and with an ulterior motive to unduly favour M/s Goel Airshirnk (India) Ltd. (M/s GAIL in short), Bhoir Compound, Val Village, Behind Hotel Shivkrupa, Anjur Road, Bhiwandi, at the cost of the Ex-Chequer. He examined the export stuffing and gave the examination certificate in a negligent and careless manner and this facilitated M/s GAIL to evade payment of Customs Duty on imported inputs/goods, to wrongly avail the exemption notification no.93/2004-Cus dtd. 10.09.2004, to contravene the provisions of Customs Act, 1962, the provisions of EXIM Policy (Import and Export Policy and Hand Book of Procedure 2002-07), the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules, 1993. Had he carefully examined the export consignments, there was a possibility that the attempt of M/s GAIL to evade payment of Customs Duty and their other transgressions could have been unraveled/unearthed at the initial stage only.

Article of Charge – II: He has carried out the examination of export stuffing without due care and attention and with gross irregularity and in gross negligence in discharge of his official duties with a dishonest motive in accordance with the various instructions issued by the Board (CBEC), Model Examination Order given by Customs Department and thus helped M/s Goel Airshrink (India) Ltd in evasion of customs duty.

Article of Charge – III: He, while functioning as Inspector of Central Excises, Range – I, Kalyan – 1 Dn, has failed to maintain his XT-1 diary properly and did not mention the details of the containers examined by him in his XT-1 diary.

Article of Charge – IV: he has failed to give true and correct statement before the Officers of DRI, Mumbai during recording of his statement under Section 108 of Customs Act, 1962 as well as before the Superintendent of (Vigilance), Thane-I under Central Vigilance Manual and gave misleading, false statement and thus failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. Servant.

Article of Charge – V: He failed to obtain the written orders/directions of the supervisory officer or written confirmation of the directions/orders if given by the supervisory officer orally to attend to the examination/supervision of export consignment (exported under Advance licence/Duty Exemption scheme/ DFIA etc). Thus contravened the Rule 3(3)(iv) of Central Civil Services (Conduct) Rules, 1964.

By the above acts of omission and commission, Shri J.L.Pandey, the then Inspector of Central Excise, Range-I, Division Kalyan-I, failed to maintain absolute integrity, exhibited lack of devotion to duty, acted in a manner unbecoming of a Government servant, and also failed to take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being posted under his control and authority and thereby violated the provisions of Rule 3(1)(i), 3(1)(ii), 3(1)(iii), 3(2)(i) and Rule 3(2)(iv) of the C.C.S (Conduct) Rules, 1964.”

5. The facts of the matter are: M/s Goel Airshrink India Limited (GAIL), Mumbai who is stated to be a manufacturer - exporter of Polypropylene Mats, had obtained a Duty Exemption Entitlement Certificate (DEEC) or Advance Licence by which he could import PP Granules without paying customs duty and after manufacturing of Mats at his factory in Sinnar

under the Actual User condition (AU condition) of the licence was required, as an export obligation, to export the finished goods. The company had obtained approval for their factory, the point of manufacture in support of their claim as Actual User, located at Sinnar (Nashik) and for a rented warehouse at Bhiwandi for the purpose of stuffing export containers. However, their factory was closed effective from May 2005 and in May 2007, when the relevant incident took place, they had taken Customs permission and indented two empty containers from the CFS for stuffing at their warehouse. Upon confirmation, the exporter on 21.05.2007, informed the applicant in OA No.304/2012 and the applicant in OA No.196/2012 who were respectively the Superintendent and Inspector of Central Excise, that they intended to stuff these two empty containers with PP Mats on the next day i.e. on 22.05.2007, in the afternoon. The Superintendent and Inspector of Central Excise, applicants in these OAs were, at that point in time, assigned the responsibility of inspection of cargo proposed to be stuffed, overseeing stuffing and then for sealing the export container and to make appropriate endorsements and authentication on the individual bales of

goods stuffed and also on the export documents. The containers were allegedly stuffed and sealed in the presence of applicants on 22.05.2007 with the export documents showing the origin of the manufactured goods as the factory of the exporter GAIL at Sinnar, Nashik although this factory was closed since May 2005. These containers were detained at JNPT Port on 23.05.2007 and they were opened, destuffed, and examined under Panchnama on 28.05.2007 by the officers of the Directorate of Revenue Intelligence (DRI). It was found on examination that the declared gross weight of containers DRYU 9039984 and IALU 4562477 were 16704 Kgs and 16710 Kgs respectively. However, the actual gross weight at the time of examination under Panchanama dated 28.05.07 turned out to be 7720 Kgs and 9190 kgs respectively. Both the said consignments valued at Rs.10,87,700/- (Wholesale Market Price) were seized under provisions of the Customs Act, 1962 under seizure memo dated 04.06.07. The Officers of DRI, Mumbai booked a case, and statements of several persons were recorded under Section 108 of the Customs Act, 1962. Further, they found discrepancies by way of missing bales although mentioned in the export documents, bales without sticker or

incorrectly declared stickers which were supposed to be affixed at the time of physical examination of export goods prior to stuffing and sealing of the containers by the two alleged delinquents who are now applicants in these two OAs. The Despatch Executive of GAIL gave a statement under Section 108 of Customs Act before one Shri A.K.Sharma of the DRI stating various facts of the case and further, stating that neither of the two applicants were present during the inspection, stuffing, and sealing of the containers but this was done in the presence of a sepoy Shri Pathare and that the Inspector, who is the applicant in OA No.196/2012, only visited for an hour in the afternoon of 22.05.2007 and left leaving directions to advise him on telephone upon completion of loading. During the inspection by the DRI, they noted the examination report recorded on the obverse side of the invoices of GAIL and signed by both the present applicants. This examination report confirms the following as per the standard instructions of the respondents and the packing list also records the following as per the standard instructions:

“1. THE CONTAINER NO. WAS OPENED AND FOUND EMPTY BEFORE STUFFING.

2. THE DESCRIPTION, QUANTITY, NET WEIGHT AND TECHNICAL CHARACTERISTICS AND VALUE OF THE GOODS COVERED BY THIS INVOICE AND THE PARTICULARS AMPLIFIED IN THE PACKING LIST IN VIEW OF ADVANCE LICENCE AND EXPORT UNDER DEEC SCHEME ADVANCE LICENCE NO. _____
DATED _____ BOTH HAVE BEEN CHECKED BY ME.

3. I HAVE CHECKED 10% QUANTITY, DESCRIPTION, WEIGHT, TECHNICAL CHARACTERISTICS OF PRODUCT TO RELEVANT STANDARD INPUTS NORMS H-229 AS PRESCRIBED UNDER HANDBOOK OF PROCEDURE.

CONTAINER NO. BOTTLE SEAL NO. C.EX.
SELA NO.

THE PACKAGE NO. OPENED EXAMINED &
WEIGHED AS PER ANNEXURE 'A' ATTACHED.

5. THE GOODS ARE EXEMPTED FROM CENTRAL EXCISE TARIFF.

6. THE SEPARATE SAMPLES ARE DRAWN FOR DYCC & DEEC RESPECTIVELY OUT OF THE CONSIGNMENT ARE ALSO SEALED UNDER MY SUPERVISION. THE SAMPLES ARE DRAWN & FORWARDED TO DYCC & DEEC FOR TEST AT THE PORT OF SHIPMENT. FORWARDED COPY OF INVOICE AND PACKING LIST IN DULY SEALED ENVELOP TO THE DY. COMMISSIONER OF THE CUSTOMS EXPORT DEPARTMENT BY THE EXPORTER, FOR COMPARISON WITH THE SHIPPING DOCUMENT WHEN FILED. GOODS STUFFED AT GODOWN N.4, G.P.O NO.593, ASHAPURA WAREHOUSE, BHOIR COMPOUND, BEHIND SHIVKRIPA HOTEL, ANJUR ROAD, VAL VILLAGE, TAL BHIWANDI 421 302, DIST. THANE.

"THE GOODS ARE MADE IN INDIA AND
MANUFACTURED BY GOEL AIRSHRINK (INDIA)
LTD, 65/108, STICE, MUSALGAON, SINNAR, NASHIK,
MAHARASHTRA, INDIA AND ARE OF INDIAN
ORIGIN.

EXPORT UNDER ADVANCE LICENCE NO. DATED
NET WEIGHT".

Some of the packing lists were signed by the

first applicant and some by the second applicant but in all cases, manufacture was shown at Bhiwandi or at Goregaon where the Company did not have factories. The statements of the applicants were also taken by the DRI on 18.06.2007 and 19.06.2007 with regard to the various discrepancies and their role and nature of duties conducted in reference to the inspection, stuffing and sealing of the containers in GAIL warehouse at Bhiwandi. Their statements recorded that both the applicants have insisted that they had personally visited the Bhiwandi godown on 22.05.2007 around 1400 hours and they had inspected the two consignments, verified 300 bales and 280 bales of PP Mats wrapped in plastic sheets with handwritten serial number and weight mentioned in the self sticking labels. Further, they have asserted that the randomly selected bales were got weighed in the available weighing scale up to the requirement of 10% and that, on completion of stuffing at 1830 hours, the sepoy Shri Pathare was called from the Range Office to affix the seals on the containers after which they recorded their inspection notes and endorsements on the back of invoices and the packing list. They submitted that they had

wrongly used the word processing unit in their endorsements on the examination report when stuffing had actually been made in the warehouse and that they were aware that no manufacturing activity occurred in Bhiwandi. They conceded that they could not explain the discrepancy found in weight of bales being 25/37 kg/bale against their verification of 55-59 kg/bale nor about the missing bales detected during surprise check as in Panchnama.

6. In their OAs, the main grounds taken by the applicants are as follows:

(i) After receiving the report of the Enquiry Officer, in which the Enquiry Officer had recommended that the charges III and VI against the applicant in OA No.304/2012 were not proved, and that charges III, IV and V in respect of applicant in OA No.196/2012 were not proved, the Disciplinary Authority conveyed these reports to the respective applicants for their reply. This was done after obtaining the views of Vigilance by way of second-stage advice. Reply was also furnished by the applicants on 19.08.2010 and 30.08.2010 but following this, the Disciplinary Authority issued a further letter on 18.10.2010 to each of the applicants proposing to disagree with the findings of the Enquiry Officer in

respect of charge No.III for applicant in OA No.304/2012 and in respect of Charge No.IV for applicant in OA No.196/2012. The applicants contend that this was strange and illegal procedure but that only 20 days and 12 days were granted to the two applicants respectively for giving their reply which they also provided on 19.10.2010, on the next day itself but they have objected to the short time provided for filing their explanation.

(ii) They argue that none of the witnesses examined by the DRI who were present and who were inquired by the DRI while preparing the Panchnama were summoned and inquired as witnesses by the Inquiry Officer. Therefore, they are of the view that the disciplinary inquiry was vitiated for this reason because the Inquiry report and views of the Disciplinary Authority were based on statements of these witnesses.

(iii) They also argue that the entire case rested on the fact that against the declared weight of the containers, the actual weight found during inspection of DRI at the Port was much less and therefore, the entire case depended on the Panchnama but this vital document has not been verified by any signatory

to the Panchanama since none of them have been examined in the inquiry. Therefore, there is no proof for the purposes of the disciplinary inquiry to establish that the weight of finished goods was different from what had been certified by the applicants.

(iv) The Inquiry Officer summoned Shri A.K.Sharma, Senior Intelligence Officer of the DRI who has recorded the Panchnama and statements of witnesses but they submit that this had been done only as a formality as could be seen from the Daily Order Sheet dated 09.02.2009 but cannot prove the statement made before him which has been heavily relied on by the Inquiry Officer. In particular, the statement of Shri S.S.Kumbhar, Despatch Executive of GAIL was considered but the applicants could not cross examine this individual whose statement has been relied on by the Inquiry Officer.

(v). They submit that the statements recorded under Section 108 of the Custom Act cannot be relied on by the Inquiry Officer in disciplinary proceedings and for this purpose, they refer to a circular issued by the CBEC (respondents) in file No.C-14010/5/2011-A.V dated 24.02.2011 (Annexure A-15) which records as under:

“3. Therefore, in respect of the departmental proceedings under Rule 14 of CCS (CCA) Rules, 1965, it is mandatory that oral evidence is recorded in the regular inquiry in the presence of the charged employee who is given full and effective opportunity to cross-examine the witness. Even in cases where an ex parte hearing is held, it is essential that a statement is duly recorded/affirmed in the regular hearing.

4. However, while considering cases of appeal/ revision referred to the Board, it has been observed in a number of cases that statements of witnesses recorded in the preliminary enquiry or under the Customs Act, 1962 have been relied upon by the inquiry officer/Disciplinary Authority even when the witnesses did not appear before the inquiry officer and affirmed the said statement. In some cases, where the witnesses appeared in the regular oral inquiry but did not affirm the earlier statement, the earlier statement was still relied upon on the consideration that it is permissible in law to rely on retracted statement. It is also seen that statements recorded by a Customs Officer under Custom Act, 1962 is routinely relied upon without the witness/complainant appearing before the inquiry officer and facing the cross examination on the plea such a statement has an evidentiary value.

5. It is clarified that proceedings under the CCS (CCA) Rules, 1965 are to be conducted strictly in accordance with the procedure laid down under the said Rule.* Proceedings under the Custom Act and under CCS (CCA) Rules are totally of a different and distinct nature. A statement recorded by an officer of Customs are admissible as evidence insofar as they pertain to proceedings under the Customs Act are concerned but the same can not be said to apply to the proceedings under the CCS (CCA) Rules, 1965. Under these proceedings, any statement which is not recorded/affirmed in the course of the regular inquiry and in respect of which full opportunity of cross examination has not been given to charged officer has no evidentiary value, and can not be relied upon by the Inquiry officer/ Disciplinary Authority.

6. Inquiry officers/ Disciplinary Authorities may keep the above position in view while finalizing the Inquiry report/passing the final order respectively.

7. The applicant in OA No.304/2012 contends that the Charge No.IV alleges failure to supervise the subordinate officers to ensure

their integrity and devotion to duty and questions how he can be expected to ensure the integrity and devotion to duty of his subordinates. He states that this is essentially a charge against his subordinates and not directed at him.

8. The applicant in OA No.196/2012, who is the subordinate, *per contra*, assign the responsibility to the first applicant, as his supervisor, and asserts that he was there to assist his superior (Superintendent) in his job.

9. They argue that no allegations of *mala fide* has been made against the applicants and that there is no evidence of any pecuniary gain to the applicants or pecuniary loss to the Government. They state that the Company had not come to adverse notice earlier despite inspections by other Inspectors and Superintendents who had made several similar despatches. They also allege that there could have been tampering of the containers between 22.05.2007 evening when the containers were sealed to their interception by DRI on 24.05.2007. The learned Counsel also refers to the acceptance by the DG Vigilance in letter dated 11.08.2009 in which it is stated that the inquiry report and comments of the Disciplinary

Authority had been examined and that, in agreement with the Disciplinary Authority, the DG Vigilance had advised imposition of major penalty. The applicants argue that this letter suggests that even before obtaining the views of the DG Vigilance, the Disciplinary Authority had already formed an opinion to punish the applicant and which had been agreed by Vigilance.

10. The respondents in their reply highlight the glaring irregularities committed by the applicants in handling of the export consignment. As a result, there was considerable loss of revenue and this was settled in part before the Settlement Commission by the Exporter by payment of Rs.8,38,71,691/-.

In this case, the applicants had certified weight of bales as between 55-59 kgs per bale whereas the DRI found the weights were only 25-37 kgs per bale and for which, the applicants had no explanation when inquired. The statements of Company staff, the private employees of the exporter, who made statements before the DRI officer, were made part of the departmental proceedings and the said DRI officer deposed to confirm the statements and the purpose of his evidence was to prove the

charge of misconduct against the applicants on the aspect of preponderance of probabilities. Even the applicants made statement under Section 108 of the Customs Act before the same officer following the seizure and had necessary opportunity to present the true factual position. In regard to the falsity of the statements of applicants, the respondents point to denial by the Company executive that the applicants were present during stuffing whereas the applicants made the exact opposite claim during the enquiry and also admitted before the DRI that they had wrongly recorded that the stuffing operation had been conducted in a processing unit rather than at a warehouse in opposition to the 'Actual User' condition of Advance Licence (DEEC) and also failed to explain the discrepancies in weight. They also point to the claim made by the delinquents in their endorsements that they had supervised the stuffing operation at Sinnar, Nashik which was the factory of the exporter whereas it was actually done at their Bhiwandi warehouse which was not satisfying the AU condition of licence. As a result of these declarations made as endorsed by the applicants, the exporters M/S GAIL who had imported PP Granules under the DEEC

Scheme claiming to be Actual Users, were able to mis-declare their export consignments as having been manufactured by them in their own factory in order to fulfill the AU condition imposed and accepted by them while receiving the advance licence. Therefore, they were able to import material duty free, dispose them off in the open market and then export PP Mats at grossly inflated weights and values so as to defraud the public revenue. Therefore, they argue that the punishment awarded by them was correctly done and was also far more lenient than the prescriptions of law as laid down by the Hon'ble Apex Court. In their parawise replies, the respondents have pointed to the contradiction between the several discrepancies in overall weight of container and individual weights of the bales against the claims made by applicants before the DRI that they had personally supervised the inspection of cargo, stuffing and sealing. This conduct itself suggests doubtful integrity. They assert that the statement of employees of the private organization had been made under the Customs Act before the DRI Officer, Shri A.K.Sharma who verified their statement and it meets the requirement of hearsay evidence that could support disciplinary

proceedings of misconduct. On the charge that the Disciplinary Authority had already taken a view on the punishment, they state that the tentative opinion of the Inquiry Officer is sent for second stage advice to the CVO and this does not mean that the Disciplinary Authority relies on the Vigilance to come to a conclusion. On the second notice containing disagreement note sent by the Disciplinary Authority, they state that all these documents have to be provided to the CE by the Disciplinary Authority in order to provide opportunity to the charged CE to give his reply and to duly represent. In any case, the applicant did not approach respondents at that point of time on these other issues or represent on the short time given and gave their replies on the next day itself on the short point involved in the disagreement note. In particular, they refer to Rule 15 of CCS (CCA) Rules, 1965 which does not prescribe an order in which these documents have to be furnished so long as all the materials are provided to the Charged Officer which had been done and both applicants had been given adequate opportunity to reply. With regard to the objections raised against the examination of Shri A.K.Sharma, they also state that the statements made before the

DRI under the Customs Act cannot be completely ignored. Further, no objections were raised by the CEs during the inquiry of Shri A.K.Sharma. Again, the Inquiry Officer has taken reasonable steps to ensure the presence of the deponents of the statements for cross examination by the applicant but in the face of failure, the respondents had to resort to the method of confirmation of statement by the DRI Officer who had recorded those statements. On the aspect of the failure to ensure integrity and devotion to duty, the responsibility lay with both the applicants and in this case, without even conducting a cursory verification, they had cleared the consignment leading to a major export fraud. Therefore, it was clear that the Superintendent had failed and the Inspector had also failed, to ensure their own proper conduct including that of their respective subordinates for proper discharge of duty. On the aspect of the Company, GAIL, not having come to adverse notice earlier, the respondents pointed out that the applicants had signed the shipping documents showing the Company as having a manufacturing unit at Bhiwandi whereas it had only stuffing permission for use of warehouse and this showed grave carelessness in verification of the AU

condition of licence, which had led to the commission of a major fraud and if the applicants' had done their duty properly, the fraud could have been unearthed at their level itself. Therefore, the respondents argue that they have demonstrated the culpability of the applicants by meeting the requirement of preponderance of probabilities for the purpose of these disciplinary proceedings and have, thereafter imposed very lenient punishment on the applicants.

11. The applicant in OA No.196/2012 has filed a rejoinder rebutting the replies and charges of the respondents. He states that the reference to the recovery of Rs.8,00,00,000/- from the exporters cannot be held against the applicant as he was not entirely in charge of the exporters business who was a regular exporter having licence from 2005 onwards and this amount and its magnitude cannot be held against the applicant entirely. Further, in relation to the reliance on the statement of witnesses, he refers to the view of the Hon'ble Apex Court in **Kuldeep Singh Vs. Commissioner of Police, (1999) 2 SCC 10** in which it is held that if the previous statement of witnesses are to be brought on record, it should be done provided

the witnesses are offered for cross examination by the delinquent(s).

12. The respondents have filed a sur-rejoinder and have pointed out that non-examination of the signatories of the Panchnama during the inquiry does not alter the factual position in regard to the gross discrepancies and grave irregularities found with the export consignment. Further, the applicant never sought cross-examination of the Panchanama witnesses during the inquiry and the present plea can only be considered an afterthought. Moreover, the applicants were confronted at the outset by the DRI with the discrepancy in the bales and in the entire container and had no explanation to offer. In relation to their certification that the goods had been manufactured by the exporters at their factory, they have reproduced the applicant's reply to the DRI "... On being asked about the exports being made by M/s Goel Air Shrink (India) Ltd from our jurisdiction, I have to state that M/s Goel Air Shrink (India) Ltd were getting the containers for stuffing of export goods i.e. Polypropylene mats at their godown premises situated at 4, GPG No.593, Ashapura Warehouse, Bhoir compound, Bhiwandi which were manufactured

at their factory at plot No.65/108, STICE, Musalgaon, Sinnar Shirdi Road, Sinnar 422 103..." The respondents infer that this deposition indicated that the applicant was not aware that the factory of the exporter at Nashik had already been shut down as long back as in May 2005. On the aspect of inability to produce witnesses, they refer to Section 32 of the Indian Evidence Act, 1872 which reads as under:

"Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves facts.."

13. They also rely on the judgments of the Hon'ble Apex Court in **J.K.Cigarettes Ltd Vs. Collector of Central Excise [2009 (242) E.L.T. 189 (Del)]** WP Nos.1854 and 1895-1898 of 1992 decided on 28.08.2008 which held that:

"which is pari materia with Section 32 of the Evidence Act viz., to rely upon statements of certain persons even when they have not been produced for cross examination...Thus, though it cannot be denied that the right of cross examination in any quasi judicial proceeding is a valuable right given to the accused/noticee, as these proceedings may have adverse consequences to the accused, at the same time, under certain circumstances, the right of cross examination can be taken away, of course the circumstances have to be exceptional."

14. Further, in relation to the deposition of Shri A.K.Sharma officer of the DRI, the respondents also pointed out that the applicants never cross examined him in the inquiry although

provided opportunity, that they have not alleged any *mala fides* against the said officer in their pleadings nor have they impleaded him for this purpose.

15. During the final arguments, the learned counsel for the applicants reiterated the chief contention made in the pleadings in regard to the procedure adopted by the Disciplinary Authority of first communicating the report of the Enquiry Officer along with the second stage advice of the CVO and after receiving the reply from the charged employees, he issued a disagreement note and asked both the CEs for further explanation. The learned counsel of applicants further contended that all this should have been communicated at one time and this procedure was clearly illegal. He further emphasized the fact that none of the private witnesses who had been inquired for the Panchnama of seizure were inquired despite the request of the applicants but even without such inquiry and opportunity for cross examination by the applicants, their statements made under the Customs Act were relied upon, contrary to the instructions of the respondents themselves as issued in file No.C-14010/5/2011-Ad.V dated 24.02.2011. Therefore, he argued, the relevant

findings recorded for proving Charge No.I and II were required to be quashed. He also argued that since the Panchnama of seizure was the chief source of evidence by which the respondents had identified the alleged delinquencies of the applicants in regard to stuffing and loading of export consignment and certification thereof, by not examining even a single signatory of Panchnama, the main evidence in support of the case could not be relied on for proving the case of the respondents against the applicants. He also relied on the rulings of the Hon'ble Apex Court in **Kuldeep Singh Vs. Commissioner of Police and others** (supra) in which it was held that Inquiry Officer could not have brought on record the so called previous statements of witnesses without permitting the delinquents, the opportunity to cross-examine them.

16. The learned counsel for the respondents refers to his reply on the alleged "strange" procedure followed by the Disciplinary Authority and refers to Rule 15(2) of CCS (CCA) Rules, 1965 which requires communication of disagreement and this had been done so as to give an opportunity to the applicants which each of them accepted without demur or objection and

filed reply on the very next date, by both of them, on 19.10.2010 and a final view was taken subsequently based on both replies. With regard to the argument that the Panchnama of seizure of the consignment had not been properly authenticated for the Inquiry by production of signatories for examination, he emphasized that Shri A.K.Sharma, Senior Intelligence Officer of the DRI had supervised the seizure and signed the Panchnama and had been called for verifying the documents as also for confirming and authenticating the statements of various witnesses who had deposed before him under Section 108 of the Customs Act. All these witnesses were examined by him and in his presence and the applicants had the full opportunity to cross examined him. He also mentioned that those witnesses inquired under the Customs Act, were employees of GAIL Company (Exporters) had been summoned and efforts had been taken to trace them but it had not become possible to trace them for the purpose of the inquiry. With regard to the contention that evidence of Shri A.K.Sharma was hearsay, he opposed this argument by relying on the rulings of the Hon'ble Apex Court in **State of Haryana and Another Vs. Rattan Singh reported in (1977)**

2 SCC 491 decided on 22.03.1977 wherein the lower Courts had set aside the order of termination on the grounds that information of the 11 bus passengers had been examined in the domestic inquiry although the departmental requirement was that the checking Inspector had to record their statements but could not, because they declined to give statement and also because the co-conductor had supported the delinquent. The Hon'ble Apex Court observed that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages

from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair, commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground. We cannot hold that merely because statements of passengers were not recorded, the order that followed was invalid.

17. The learned counsel also relied on the rulings of the three Judges Bench of the Hon'ble Apex Court in **J.D.Jain Vs. Management of State Bank of India and Another reported in (1982) 1 SCC 143 decided on 17.12.1981** in which it was

observed that strict rules of evidence are not applicable for domestic inquiry and the charges do not need to be established beyond reasonable doubt and proof of misconduct was sufficient. The Hon'ble Court also held that for domestic inquiry, hearsay evidence was admissible and when it seeks to establish not the truth of the statement but only the fact that it was made.

The Hon'ble Apex Court observed as follows :

“22. The Privy Council in the case of **Subramaniam Vs. Public Prosecutor, (1956) 1 WLR 965**, observed:

Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made.”

18. In rebuttal, the learned counsel for the applicants argued that the facts in two rulings of the Hon'ble Apex Court were different and therefore, those rulings did not apply to the present case. He also raised the argument that in terms of the Panchnama, the officer had not checked the weight of the consignments and any such averments had been denied by the applicants.

19. In reply, the learned counsel for the respondents referred to the order-sheet dated 09.02.2019 in which Shri A.K.Sharma was inquired and verified the statements of employees of GAIL recorded by him under Section 108 of the Customs Act, 1962. These individual statements of GAIL employees record of how their manufacturing plant at Sinnar was closed since May 2005; the sale by them of imported PP Granules in the local market and subsequent local purchase of PP mats from the market for the purpose of export; their knowledge about how the weights in the export invoices were manipulated by showing higher weight and by mis-declaration; the details of how the exporters employees had prepared of the exporters invoices, packing list, examiners report of Annexure A etc in advance at their Lower Parel office in Mumbai before going to Bhiwandi; and how the applicants had signed the documents without any verification while the containers were sealed by a Sepoy. Further, they have explained how the bale numbers and weight shown in Annexure A of invoices were prepared by them randomly and not based on any physical examination or weighment by anybody and further, the bale number wherever appearing on the bales were not written by them

or in applicants' presence and may have been written at the godown in Bhiwandi or concerned manufacturing unit from which they have been purchased for export.

20. We have gone through the OA and rejoinder along with Annexures filed on behalf of the applicant. We have also gone through the reply and sur-rejoinder along with Annexures filed on behalf of the respondents and have examined the files and cognized all relevant facts of the case.

21. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstance, law points, case law and rival contentions in the case.

22. On the initial objection raised by the applicants to the procedure adopted by the Disciplinary Authority of first conveying the Inquiry Officer's report and second stage advice of Vigilance to the delinquent officers and after receiving their reply, sending them a disagreement note for their further reply, the principles of natural justice demand that whatever input is being adopted by the Disciplinary Officer for arriving at conclusion should be provided to the delinquent officer for

enabling them to provide their views, if any. These are the provisions of Rule 15 of the CCS (CCA) Rules and applicants have not demonstrated how this Rule has been violated either in its intent for providing due opportunity or in terms of procedure for doing so. If the Disciplinary Authority had not done so, he could have been charged of not having giving the delinquents due opportunity. It is quite evident from the process adopted, the Disciplinary Authority made a full examination of all the documents placed before him including the initial first reply of the delinquents and then realized that the certain aspects have not been properly assessed in his views, by the Inquiry Officer and therefore, he conveyed his disagreement. It is not the case of the applicants that he had already decided the nature of the punishment at that stage and it is clear from the facts that he communicated this disagreement note that he had not made a thorough examination of the documents previously had not arrived any conclusion in respect of individual items of charged but, it was only a later stage, that he took a comprehensive view and located certain deficiencies that required corrective steps to ensure that the principles of natural justice

are served. Therefore, what he did may appear strange or rather, irregular in some degree, to the applicants but it cannot be considered to be wrong in law or unjust and such as to cause prejudice to the delinquents we hold that it accorded perfectly well with the principles of natural justice in the case.

23. The other issues contended by the applicants relate to the seizure Panchanama of seizure, reliance on these documents including on statements of witnesses not produced for cross examination in the domestic inquiry. For these purposes, it is necessary to understand the nature of the responsibility and action of the CE's in the present matter, we need to comprehend the nature of the scheme under which these transactions took place. The Duty Exemption Entitlement Certificate (DEEC) commonly called Advance Licence is issued under the Import-Export policy and enables duty free import of inputs required for export production by a manufacturer exporter or by a merchant exporter who has nominated a specific jobbing/manufacturing unit for the purpose. The value and quantity of each item permitted for duty free import is specified in the licence as per the standard input-output norms laid down in

the Handbook of procedure which issues alongwith the Import Policy document. Such an Advance Licence is attached with the Actual User condition by which is meant that there is a specific manufacturer to whom the exporter is attached. In case he is a merchant exporter who had obtained licence for himself and is an exporter, he has to fulfil the export obligation by exporting the result of manufacture both in terms of value and quantity as specified in the norms after allowing for standard wastage. At the time of export, the Central Excise Officers entrusted with this job prepare written examination certificates covering all these aspects and these are used for redemption of export obligation discharge certificates. The Customs department has prescribed the format of such certificates and the respondents in particular had laid down the following requirements:

“2.1. The Assistant Commissioner Customs, Export Department, Nhava Sheva vide his letter bearing F.NO.S/6-FSP-895/2002 dated 06.05.2005 gave the first permission of examination and factory stuffing of Polypropylene mats under DEEC Scheme. In this letter he gave the details as to how the examination is to be carried out as well as model examination report also.

2.2. The Model Examination order given was as under:
“Verify particulars as per Invoice and Packing List,
Inspect Container No.(As declared on Invoice).
Verify empty, Inspect Lot, Check Marks and
Number, Examine 10% (Max 40 packages) after

selection, check description quantity, Weight, Value and technical Characteristics of the resultant product (export product) stipulated.

EXPORT UNDER DEEC/DEPB: Verify the description of export goods confirms to relevant DEEC notified description and duty credit rates / the description of export goods confirms to relevant standard input output norms as prescribed under Hand Book of Procedures, if no credit rates have been notified as yet. Having regard to the quality or condition of goods, also rate whether the Present Market Value of the goods, and FOB Value of the goods as declared in the invoice as fair, if not, please indicated fair value. Please certify whether the declared invoice price indicates the correct F.O.B. price of such goods. Also indicate the present market value (PMV) of the goods. While certifying the values as above the same should be done having regard to the instruction issued from F.No.605/51/97 DBK".

2.3. It was also stated in the said Model Examination Order:

"...please comply with the specific condition, if any, stipulated in the advance licence/DEEC/DBK schedules relevant input/ output norms, as the case may be, certify whether the exporter has been availed or not availed any benefit under Central Excise Rules, 1944 for the input / Exempted goods."

2.4. It was also stated in the said Model Examination Order that "any discrepancy sought to be brought to the notice of their office must be mentioned boldly in Red ink/typing".

24. These examination reports were given by the Charged Officers on the obverse side of the invoices of the exporters M/S GAIL and in the following manner:

"2.6. The examination reports were given on the back side of the invoices M/s GAIL signed by the Superintendent Shri K. Rama Murthy as well as Inspector. The Examination report invariably contained the reference no. of the permission given for stuffing, then it was certified in the following manner (the blank spaces filled with the specific details relevant for the export consignment)

“1. THE CONTAINER NO. WAS OPENED AND FOUND EMPTY BEFORE STUFFING.

2. THE DESCRIPTION, QUANTITY, NET WEIGHT AND TECHNICAL CHARACTERISTICS AND VALUE OF THE GOODS COVERED BY THIS INVOICE AND THE PARTICULARS AMPLIFIED IN THE PACKING LIST IN VIEW OF ADVANCE LICENCE AND EXPORT UNDER DEEC SCHEME ADVANCE LICENCE NO. DATED BOTH HAVE BEEN CHECKED BY ME.

3. I HAVE CHECKED 10% QUANTITY, DESCRIPTION, WEIGHT, TECHNICAL CHARACTERISTICS OF PRODUCT TO RELEVANT STANDARD INPUT NORMS H-229 AS PRESCRIBED UNDER HANDBOOK OF PROCEDURE.

4. THE GOODS HAVE BEEN PACKED IN BALES AND STUFFED INTO CONTAINER DETAILS GIVEN BELOW:

CONTAINER NO. BOTTLE SEAL NO. C.EX.SELA NO.

THE PACKAGE NO. OPENED EXAMINED & WEIGHED AS PER ANNEXURE 'A' ATTACHED.

5. THE GOODS ARE EXEMPTED FROM CENTRAL EXCISE TARIFF.

6. THE SEPARATE SAMPLES ARE DRAWN FOR DYCC & DEEC RESPECTIVELY OUT OF THE CONSIGNMENT ARE ALSO SEALED UNDER MY SUPERVISION. THE SAMPLES ARE DRAWN & FORWARDED TO DYCC & DEEC FOR TEST AT THE PORT OF SHIPMENT. FORWARDED COPY OF INVOICE AND PACKING LIST IN DULY SEALED ENVELOPE TO THE DY. COMMISSIONER OF THE CUSTOMS EXPORT DEPARTMENT BY THE EXPORTER, FOR COMPARISON WITH THE SHIPPING DOCUMENT WHEN FILED.

GOODS STUFFED AT GODOWN NO.4, G.P.O. No.593, ASHAPURA WAREHOUSE, BHOIR COMPOUND, BEHIND SHIVKRUPA HOTEL, ANJUR ROAD, VAL VILLAGE, TAL BHIWANDI 421 302 DIST. THANE.”

25. Therefore, the duties assigned to the charged employees was for faithfully following the requirements of the DEEC Scheme of Advance licence including the enforcement of its Actual

User condition on the place of manufacture as specified in the permission granted by the Customs Department while releasing the empty containers for stuffing at their godown. Some of the items in the packing list show the place of manufacturer as Aurangabad (Super Mats), Goregaon (V M Plastic) and Stice Musalgaon, Sinnar, Nashik, Annexure A and contained details of bale numbers and weights signed by Shri Pandey Inspector, applicant in OA No.196/2012, after physical examination of goods, stuffing and sealing of the containers.

26. It is in this context that after the containers were loaded on 22.05.2007, they were available at the port on 23.05.2007 where they were detained and investigation was carried out by opening them on 28.05.2007 during which a Panchnama was executed, statements of the exporters and their executives were recorded under Section 108 of The Customs Act, 1962 by Shri A.K.Sharma, DRI and this was followed by questioning of the Charged Officers and others under Section 108 of the Customs Act, 1962. [Against the declared weight of 16,704 kg and 16,710 kg respectively of the two containers, however, the actual gross weight recorded under Panchnama was found to be 7,720 kg and 9,190 kg.

27. The individual bales were also examined and many of the stated bails numbers in Annexure A certificates by the Charged Officer were missing or packing list were absent and papers stickers affixed on the bails were absent, individual bails of lower weight with variation in the number of pieces per bales.] [The delinquent officers were unable to explain the reason for such variation both at the micro level and at the macro level of the container despite being given details of the findings of the seizure the opportunities to provide such explanation.] The exporter and the employees of the exporter have recorded their statements and informed that the imported raw materials had been sold in the local market mostly to regular buyers named during the inquiry by them but for the purpose of export and to meet the export obligations under DEEC, they had procured the PP Mats from the local markets from various manufacturers including from Jalgaon and after inflating the weights and values of the stuffed bales in containers have attempted to export. It is in this examination that the Despatch Executive (Shri Kumbhar) of the exporter confirmed that their godown in Bhiwandi was a rented premises which was not a manufacturing

facility but was used as a warehouse for PP mats and where stuffing of containers was done with PP mats that came from Jalgaon, Aurangabad. Further, that a 40 ft container could hold about 11-12 MT but these two invoices for the two 40 ft containers now intercepted were for 16-17 MT and he accordingly accepted over-valuation. He also provided information on the nature of or absence of visits by the Charged Officers at the time of stuffing and sealing by the sepoy, Shri Pathare. In the course of these statements made under the Custom Act, the employee have also specifically stated that the delinquent officers never supervised the process of checking of inspection stuffing and sealing of the containers and that the Inspector (CE in OA No.196/2012) had visited for an hour prior to this work when it was taken up on 22.05.2007 while the Superintendent (CE in OA.No.300/2012) never visited at all. The charge memorandum also records the statement of the Superintendent made on 18.02.2008 on the manner in which he considered the requirements of Actual User condition to be complied under the DEEC Scheme for the value of goods, the details of verification required under AL/DEEC, the input/output norms followed as endorsed by him

in the examination report, he had simply followed what had been done by his predecessor without detailed verification and further, that as against the claims contained in the packing slip and invoices that goods had been manufactured at M/S GAIL at Bhiwandi but which was only a warehouse, he had stated that such verification did not arise as the warehouse was not a Central Excise registered unit of the Range and the goods did not attract Excise duty and further, that the location was only meant as a warehouse for stuffing permission. He also sought to transfer the responsibility for such verification to the officers having jurisdiction over the exporter's manufacturing unit and therefore, submitted that such facts were not verified.

28. In essence, these were consignments intended to fulfill the Actual User norms imposed while permitting duty free input to the exporter manufacturer namely GAIL under the DEEC (AL) scheme and for the purpose of satisfying the requirements of export obligation accepted under the scheme. None of the requirements of the licence were met in the present case although it is the specific duty of the Customs Department to carry out such a verification and

to satisfy themselves through their responsible officers and for which, instructions had also been issued by the respondents to the delinquent officials entrusted with this task. In the present case, the seizure revealed the failure to verify satisfaction of the AU condition of the licence. Further, there were substantial discrepancies between the overall declared gross/net weights of the containers and their actual weights individuals weights of bales, missing bales and, packing slips and stickers, packing slip descriptions, wrongly numbered bales, etc between what was declared in the export documents and was actually found in the containers when they were de-stuffed for inspection on 22.05.2007 under Panchnama. This Panchnama had been executed before and in the presence of Shri A.K.Sharma who was also made a witness in the disciplinary proceedings and to prove the document and facts of seizure and full opportunity was available to the applicants for cross examination, although not utilized.

29. The learned counsel for the applicant has assailed the act of calling Shri A.K.Sharma as a witness. However, this officer had supervised the seizure of containers and it was evidently necessary for the respondents to

produce him to verify the Panchnama and the veracity of the seizure itself during which he verified having recorded statements of various persons under the Customs Act. We note that in the reply furnished by the applicants in the inquiry, they have referred to the intervening time between 22.05.2007 when they sealed the containers and 28.05.2007 when the containers was de-stuffed and have claimed that perhaps there was some tampering. This contention was never raised previously even in the statements recorded by the delinquent officers under the Customs Act at the initial opportunity given to them. Therefore, it became all the more necessary for the respondents to introduce Shri A.K.Sharma as a witness to enable the applicants to have the opportunity of cross examining him and he was heard in their presence although they have not made any attempt to cross examine him nor to disagree with his deposition and verification of the statements of three employees of the exporters. The Panchnama of seizure was provided to CEs while recording their statements and has also been supplied to the Charged Officer as part of the list of documents in Annexure III to the charged memorandum and that has never been contested as

also observed in the daily order sheet of the disciplinary inquiry of the Charged Officers.

This belated challenge to the seizure, Panchanama and the official witness is therefore, clearly an afterthought and made even without alleging mala fides, providing such evidence and impleading persons with such mala fides.

30. The learned counsel for the applicants has questioned the reliance on these very statements of three employees of the exporters. The Enquiry Officer's report details the steps taken to summon these witnesses and it was because that could not be procured, that Shri A.K.Sharma was brought in to depose for the purpose. The learned counsel has relied on **Kuldeep Singh** supra, however, in that case it is noted that two of the three alleged complainants were not examined because the delinquent constable had ensured their disappearance and no efforts were taken to compelled their attendance. Moreover, their previous statements were not their original statement but had been recorded by then SHO at receiving their original statement of complaint and even then copy of this had not been provided to the delinquent. The circumstances in this case are very

different including all the points offers were made to secure the witnesses. Further, it is also noticed from the supplementary submission of the delinquent dated 16.04.2009 that they had questioned the non verification of the Panchnama and statement of the Pancha witnesses who had not been offered for cross examination during the inquiry. In response, the learned counsel for the respondents has referred to the judgment of the Hon'ble Apex Court in **Rattan Singh** supra which was also followed partly in **J.D.Jain** supra. In **Rattan Singh** the 11 passengers have refused to have their statement recorded and the Court held that it was necessary to determine if their some evidence for the purposes of holding the charged against the delinquent and that for a domestic inquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. Further, that all materials which are logically probative for a prudent mind are permissible. Taking this further in **J.D.Jain** supra the three Judges Bench of the Hon'ble Apex Court pointed out that hearsay evidence could be admissible when it was used to establish the truth of the statement but the fact that it was made in the present case the facts are stark. The container was certified to

be twice the weight of what it was actually was when it was verified by the respondents. There are other allegation made against the delinquent as contained in those statement of witnesses namely, that they never attended the inspection of stuffing and that all the certify were done without any application of mind or by reference to the facts of the matter. If that have bee proven and respondents had accepted that position, there would have been no alternative in the face of such facts for the respondents who have concluded that this incident and the conduct of the delinquent could only classified as grave misconduct requiring highest punishment available under the Conduct Rules. For the limited purpose of this inquiry and its conclusions the evidence of the witnesses was sufficient for the purpose of establishing that they have defaulted for Actual User condition of DEEC Scheme and had failed to meet all the parameters required for satisfying the grant of licence to them. That evidence coupled with the facts that there were so many discrepancies suggests that the delinquent officers who had been charged with specific responsibilities had failed to perform them and in the circumstances, the nature of the discrepancies suggests that

these were not acts of mere omission or of negligence but deliberate in nature.

31. The learned counsel for the respondents has also referred to the instruction dated 24.02.2011 of the respondents of not considering the statement recorded in preliminary inquiry under the Custom Act for the purpose of disciplinary inquiry. The principles laid down in that circular are in accordance with the rules of natural justice but as being delineated by the Hon'ble Apex Court in the judgments in **State of Haryana and Another Vs. Rattan Singh, J.D.Jain Vs. Management of State Bank of India and Another** supra, the purpose of a disciplinary inquiry and limitation under which it is carried out have to be carefully kept in view while applying these principles to any particular case.

32. In view of the above, there appears to be no fault that can ascribe to the respondents in conduct of the disciplinary proceedings on any of the grounds mentioned by the applicants in the present OAs. The applicants have received not only the benefit of fair and just hearing but, as pointed out by the respondents themselves, they have been granted the benefit of very lenient punishment in comparison to the

manner in which they have debauched the duty free advance licence scheme and exporter to get away with substantial profit through illegal means part of which punishment have been deducted and recovered as a result of the surprising inspection of the DRI in the present incident. .

33. In the circumstances, this OA is dismissed as lacking merit without any order as to costs.

(R.N.Singh)
Member (Judicial)

(R.Vijaykumar)
Member (Administrative)

kmg*

50
23/10/19

