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

ORIGINAL APPLICATION No.392 OF 2012

Dated this Wednesday, the 20th day of November, 2019

**CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)**

N.C.Mishra, Presently working as Assistant Director,
Risk Management Division,
Directorate of Systems Central Board of Excise and Customs,
13 Sir Vithaldas Thakarsey Marg Opp. Patkar Hall,
New Marine Lines, Mumbai 400 020 &
presently working at A/1402, Plot No.1 and 2 Sector 18,
Sanpada (East) Navi Mumbai 400 705. - **Applicant**
(By Advocate Shri Ramesh Ramamurthy)

VERSUS

1. Union of India, through the Secretary, Department of Revenue,
Ministry of Finance, Govt. of India, North Block,
New Delhi 110 011.

2. Chief Commissioner of Custom, Mumbai Zone-1,
New Customs House, Ballard Estate, Mumbai – 1.

3. Commissioner of Customs (General), New Custom House,
Ballard Estate, Mumbai 400 001. - **Respondents**

(By Advocates Shri V.B.Joshi and Shri D.A.Dube)

Order reserved on 31.07.2019
Order pronounced on 20.11.2019

ORDER

Per: Dr. Bhagwan Sahai, Member (A)

Shri M.C.Mishra, then working as Assistant Director, Risk Management Division, Directorate of Systems, Central Board of Excise and Customs, New Marine Lines, Mumbai filed this OA on 09.05.2012 seeking setting aside of order dated 06.07.2010 (Annex A-1) of

and direction to the respondents to grant him promotion as Assistant Commissioner from 2002, further Deputy Commissioner from 2006 and Joint Commissioner from 2012 on par with his juniors with due dates and consequential seniority, pay fixation, full back wages and other service benefits. He also seeks cost of this application from the respondents.

2. Summarized facts:

2(a). The applicant joined the Customs Department as direct recruit Examiner in 1980 and then was promoted as Customs Appraiser (Group B Post) in January 1989. He has stated that his next promotion as Assistant Commissioner was due in 2002, as Deputy Commissioner in 2006 and Joint Commissioner in 2012 but due to the disciplinary proceedings conducted against him and penalty imposed on him, promotions to these posts were not granted to him till his superannuation in April 2016.

2(b). He was issued a charge memorandum on 19.03.1999 by Commissioner of Customs

working as Customs Appraiser with Mumbai Customs House between December 1994 to July 1995 (Annex A-3). It alleged that he did not verify correctness of declared value or market value of bicycle parts in Shipping Bills of certain Delhi based exporters and thereby caused revenues loss to the Government.

2(c). It has been further stated that same Delhi based exporters of bicycle parts exported those goods from Madras Port when a live consignment was seized by Directorate of Revenue Intelligence (DRI), and which also ordered an inquiry into similar exports through Mumbai Port. But in the report of the DRI submitted to Director General of Revenue Intelligence, New Delhi, it was mentioned that on verification of documents and facts, no discrepancies were found in the value and quantity declared by the exporters and therefore there was no case for issuing show cause notice or demand notice to them under the Customs Act, 1962.

2(d). The applicant has further stated that in spite of above finding of the DRI,

proceedings were initiated under the Customs Act against three exporters, based on them Commissioner of Customs (Exports) conducted hearing and thereafter dropped the show cause notice and demand notice issued to them vide order dated 27.12.1997. Against that order of the adjudicating authority, the department filed appeal before CESTAT which was decided by order dated 19.09.2000 dismissing the appeal.

2(e). The department challenged that CESTAT order before the Supreme Court and as per order dated 05.04.2006, the case was remanded back to CESTAT for passing a fresh order (Annex A-6). Then the CESTAT passed the order again on 19.09.2006 holding that there was no over-valuation and no infirmity in the order of the adjudicating authority (Annex A-7). The department again challenged that order before the Apex Court in Civil Appeal No.13713 of 2007 but the SLP was rejected on 07.09.2007. In view of the Apex Court order, the issue of over-valuation of goods by the bicycle Exporters became final. There was no

over-valuation of export goods by the exporters and the duty draw back paid was correct.

2(f). In view of the above, there was no ground to issue the charge-sheet and continuing the disciplinary proceedings against him, the applicant claims. The Inquiry Officer in his inquiry report dated 24.08.2007 held that charge No.1 and charge No.3 were not proved but charge No.2 was proved to the extent that the charged officer (i.e. the present applicant) had failed to maintain devotion to duty by not bringing on record his suspicion about over-valuation of the goods. But in view of the finding recorded in the Apex Court decision, there was no over-valuation of the goods and the Inquiry Officer could not have held that charge No.2 was proved against the applicant.

2(g). The inquiry report was sent to Central Vigilance Commission for second stage advice. The CVC in its OM dated 28.01.2010 observed that no *mala fide* has been established against the applicant, no revenue loss is attributable

to him and advised for imposition of minor penalty. The applicant claims that this advice of the CVC is also not correct as it ignored the ratio of the Apex Court decision on that matter. A copy of the CVC advice was made available to the applicant with letter of 11.02.2010.

2(h). In his reply of 24.02.2010 to the inquiry report, he requested to be exonerated from all the charges levelled against him. The Disciplinary Authority (respondent No.3) thereafter passed the penalty order of censure on the applicant on 06.07.2010. The Disciplinary proceedings against the applicant got prolonged over 14 years and the order passed by the Disciplinary Authority noted that appeal was pending before the Supreme Court against the order of CESTAT. In fact, after the Apex Court decision, dismissing the appeal of the department, and the revised order of CESTAT having become available, the matter should have been reviewed by the Disciplinary Authority but it was not done. The appeal filed by the applicant on

14.08.2010 was sent to respondent No.2 which gave a personal hearing to him on 05.04.2011 and thereafter passed the order dated 23.05.2011 dismissing the appeal.

2(i). After the penalty was imposed on him, he was promoted as Assistant Commissioner of Customs in 2010 but that promotion was due in 2002 and further promotions as Deputy and Joint Commission in 2006 and 2012 were not given to him. The applicant retired in April, 2016. Since the impugned orders passed by the Disciplinary and Appellate Authorities are not sustainable in view of the Supreme Court order holding that there was no over-valuation of goods and no loss of revenue, this OA has been filed.

3. Contentions of the parties:-

In the OA, rejoinder and during the arguments on 31.07.2019, the applicant has contended that -

3(a). the part of charge no.II which was held by the Inquiry Officer as proved i.e. failure of the applicant to maintain devotion

to duty by not bringing on record his suspicion of over-valuation of the goods for order of his superior authority was not a part of charge No.2. The CVC advice recommending imposition of minor penalty on the applicant was not proper because the CVC should not have ignored the ratio in the Apex Court decision on the subject matter in which it was held that there was no over-valuation of the export goods and no loss of revenue to the Government and thus there was no ground available for the Disciplinary Authority to impose penalty on the applicant;

3(b). the investigation carried out by the DRI into export of bicycle parts from Mumbai port prior to issuing of charge-sheet to the applicant had revealed that there was no case for over-valuation of export goods and loss to the revenue, and therefore, issuance of charge-sheet to the applicant and subsequent penalty was not justified. The bicycle parts exported by the exporters which formed subject matter of the charge-sheet had already been dealt with by the CESTAT and the Apex Court as

mentioned above. But that finding was ignored by the authorities while imposing penalty on the applicant which is not sustainable in law;

3(c). the finding of the Inquiry Officer that the applicant did not record his suspicion in writing about over-valuation of the exported bicycle parts has to be treated as unsustainable. In spite of no over-valuation of exported goods and no revenue loss, the respondents have held the applicant guilty of a minor charge which cannot be done in isolation because that issue was linked to over-valuation and revenue loss;

3(d). the Disciplinary proceedings against the applicant got dragged over almost 14 years depriving the applicant of his promotions as the charge-sheet was issued on 19.03.1999 relating to an incident of 1994-1995 and final order was passed on 06.10.2010. The penalty has also had the same effect of denying him promotion as Assistant Commissioner in 2002 (which was subsequently granted to him only in 2010) and subsequent promotions as Deputy Commissioner from 2006 and Joint Commissioner

from 2012. This has affected his pension and retiral benefits also;

3(e). the severity of the punishment is not relevant and what is relevant is justification for imposing even the minimum punishment on the applicant. The CESTAT judgment hold that there was no over-valuation of goods exported through Mumbai Port and the goods exported through Chennai Port and Mumbai Port were different. This judgment was available with the respondents when the punishment order was imposed on him by them. But the subject matter involved in the departmental inquiry under the Service Rules as well as in the proceedings under the Customs Act before the CESTAT was the same, hence the Disciplinary Authority could not imposed any penalty on the applicant;

3(f). the order of penalty imposed by the Disciplinary Authority and the order of the Appellate Authority confirming the penalty amount to interfering in judicial delivery system because the law laid down by the Apex Court under Article 142 of the Constitution is

binding on all the persons including the Government but the departmental authorities have ignored the constitutional mandate;

3(g). the Inquiry Officer has not given reason to justify the finding that the charge No.II has been partly proved against the applicant. Since the show cause notice issued to three of the sixteen exporters was dropped after full hearing by the Commissioner of Customs (Exports), Mumbai and that order has been upheld up to the Apex Court, it effectively cancelled the basis for issue of the charge-sheet. Hence the penalty imposed on the applicant deserves to be set aside;

3(h). the respondents authorities have not dealt with the applicant's submission properly and therefore, the penalty order is vitiated. On having proved only the small part of the charge II, the respondents should not have imposed the penalty. The Appellate Authority did not decide his appeal in accordance with Rule 27 of CCS (CCA) Rules, 1965. The Appellate Authority has mentioned in para 3.5 of the Appellate order that the applicant had

not acted as per Rule 16(A) of CCS (Conduct) Rules, 1964 but violation of that Rule was not an allegation levelled against him in the charge-sheet. The contention of the respondents that the applicant has failed to obtain the written instructions of Assistant Commissioner (Export) regarding valuation of the goods is not correct because there is no finding of the Inquiry Officer that he had failed to obtain such written instructions;

3(i). the contention of the respondents is not correct that the applicant should have put up in writing to his superiors his suspicion of over-valuation of the goods so that alert could have been issued because this was not an allegation in the charge-sheet. Therefore, the OA should be allowed.

In the reply, sur-rejoinder and during the arguments on 31.07.2019, the respondents have contended that -

3(j). the applicant was charge-sheeted because he processed the shipping bills of bicycle parts exporters without verifying

correctness and acceptability of declared FOB and failed to maintain absolute integrity expected of a Government servant;

3(k). he failed to obtain written instructions of his superior authority by following stipulated procedure and thus, failed to maintain devotion to duty;

3(l). in agreement with the findings of the Inquiry Officer on charge No.II that the applicant had failed to maintain devotion to duty by not bringing on record his suspicion about over-valuation of goods, the Disciplinary Authority imposed the penalty of censure on the applicant;

3(m). in the Disciplinary proceedings, the applicant was charged not only in respect of over-valuation of export goods but because of his non-adherence and non-compliance with the laid down procedure on this subject. Hence the Disciplinary Authority has held the applicant accountable for his failure to bring on record his suspicion of over-valuation and take proper written orders for assessment of

the shipping bills by revisiting the declared value;

3(n). during the proceedings, contravention by the applicant of the Rule 3(1) of CCS (Conduct) Rules, 1964 has been established and therefore, he has been imposed only the minor penalty of censure;

3(o). since it was a sensitive case of suspicion of over-valuation of export goods, investigations carried out by the various investigating agencies and consultation with the authorities such as CVC, the Disciplinary Authority had to wait for receipt of reports from those authorities and therefore, the proceedings have taken long time;

3(p). since the applicant himself had mentioned in his statement that he had orally informed the higher authority about over-valuation of the export goods, he ought to have reduced to writing his suspicion and requested his superior authority for investigation the goods for suspected over-valuation which he did not do. Therefore, the

punishment awarded is justified and the OA should be dismissed.

4. Analysis and conclusions:

4(a). We have perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents and considered the arguments advanced by both sides on 31.07.2019.

4(b). The main contentions raised by the applicant are :

(i). the proved charge against him was not included in the Article of charge II,

(ii). in Inquiry Officer's report, there was no finding that he had failed to put up in writing to the Assistant Commissioner Customs his suspicion of over-valuation of the export goods,

(iii). the Appellate Authority did not decide an appeal as per Rule 27 of the CCS (CCA) Rules, 1965.

(iv). in view of decisions of Commissioner of Customs (Exports) Mumbai, CESTAT and Apex

Court holding that there was no over-valuation of bicycle parts exported by the Exporters, he should not have been charge-sheeted and punished; and

(v). the disciplinary proceedings against him dragged on for more than 14 years thereby depriving him of promotion.

4(c). In the charge-sheet served on the applicant, the Article of charge No.II was that while functioning as an Appraiser with the Export Department of Customs House, Mumbai he processed 155 shipping bills of bicycle parts filed by suspect exporters without verifying the correctness and acceptability of declared FOB prices, though he was required to satisfy himself about the correctness of the declared market price of the bicycle parts which were much less than the drawback amount claim and therefore, no drawback is admissible in terms of Section 76(1)(b) of Customs Act, 1962. Even if he had not processed the shipping bills without going into valuation aspect as per the instruction of the Assistant Commissioner (Exports), he failed to obtain

any written instruction in this regard and in doing so, he has not followed the stipulated procedure and consequently failed to maintain devotion to duty expected of a Government servant and thereby contravened provisions of Rule 3(i)(ii) of the Central Civil Services (Conduct) Rules, 1964.

4(d). During his submissions before the Inquiry Officer, the applicant mentioned that it was his intention that the case should get investigated and when on having been returned by him some shipping bills were resubmitted to him with lower declared value. He processed them in normal course in order not to submit to the Assistant Commissioner Shri Chopda, who would have taken them for investigation. However, he gave them to Shri D.P.Singh, the other Assistant Commissioner who was not authorized to deal with them according to allocation of work. As a result, they were cleared and even subsequently shipping bills of suspect exporters with FOB values continued to be cleared (page 100-101).

The Inquiry Officer has further mentioned that in his statement, the applicant had stated that he developed doubts about correctness of the declared FOB values, he raised the issue with his superior who according to him did not encourage him. He nevertheless declined to accept the declared FOB values and returned to Customs House Agent (CHA) who in turn resubmitted the bills after lowering the FOB values and these were then processed by the applicant.

In his appeal to the Hon'ble President of India dated 14.08.2010, in paragraph No.7, the applicant himself submitted that the issue was only a matter of suspicion and he had brought it before his superior officer the Assistant Commissioner of Customs who thought that no action was necessary.

4(e). From these facts it is clear that the applicant himself suspected over-valuation of the FOB of the export goods because of which he returned the bills to the Customs House Agent who resubmitted the bills after reducing

the FOB values. When this is the admitted position of the applicant, the contention of the respondents that it was his duty in writing to submit his suspicion of over-valuation of the export goods to his superior authority but the applicant failed to do so. This is what has been held against him and proved during the inquiry. In view of this, the conclusion of the Disciplinary Authority that the applicant even after becoming aware of over-valuation of the export goods, failed to discharge his duty by bringing his suspicion in writing to the higher authority. Therefore, the contention of the applicant that the proved part of Article of Charge II was not included in the charge is not correct, it is only semantics.

4(f). Since the charge proved against him and punishment based thereon was under the Conduct Rules and not specifically with respect to over-valuation of the export goods, the applicant's contention that in view of over-valuation of export goods having not been upheld by the Commissioner of Custom and

CESTAT, he should not have been charge sheeted and punished is not justified and acceptable.

4(g). In support of his contention that the Appellate Authority did not process his appeal as per Rule 27 of CCS (CCA) Rules, 1965, he has simply mentioned that the allegation of not getting his suspicion of over-valuation not confirmed/over-ruled by his superior officer as proved during the inquiry and his written submissions made during the personal hearing have not been considered is also without any justification. The impugned order on appeal dated 25.05.2011 passed by the Chief Commissioner of Customs is a detailed and well reasoned order explaining how the applicant failed to observe the prescribed procedure when valuation of export goods is suspected by the Appraiser. As per Rule 16-A Sub Rule 4(iv) of CCS (Conduct) Rules, 1964, a junior officer receiving oral order from his superior officer should seek its confirmation in writing as early as practicable. However, the applicant failed to comply with that provision. Therefore, there is no merit in

the contention of the applicant that his appeal was not decided as per Rule 27 of CCS (CCA) Rules, 1965.

4(h). About the long period taken by the Disciplinary proceedings, the respondents have explained the reasons and we do not discern any deliberate attempt by the respondents to delay conclusion of those proceedings. In context of delay in conclusion of the Disciplinary proceedings, the Apex Court view in these two cases are relevant - **Government of Andhra Pradesh and others Vs. V.Appala Swamy**, that no hard and fast rules can be laid down about delay in concluding departmental proceedings. Each case must be determine on its facts by considering whether by reason of delay the employer condoned the lapses on the part of the employee and where delay caused prejudice to the employee. In case of prejudice, however, it is to be made out by the employee before the Inquiry Officer. In **Secretary, Forest Department and others Vs. Abdul Rasul Chowdhury**, that the delay in concluding the disciplinary proceedings is not

fatal to the proceedings, it depends on the facts and circumstances of the case. If the delay is explained satisfactorily then the proceedings should be permitted to continue. In the present case, the proceedings already got concluded culminating in the punishment order dated 06.07.2010. Therefore, there is no substance in contention of the applicant on this ground also.

4(i). From the case record, we find that the respondents have provided adequate opportunity of defence to the applicant, the Appellate Authority provided even personal hearing to him and their decisions to impose the minimum penalty of censure on the applicant was fully justified. There is no infirmity or flaw in the proceedings conducted by the respondents. Consequently, the OA is without any merit and deserves dismissal.

5. Decision:

The OA stands dismissed. No order as to costs.

(Ravinder Kaur)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

kmg*