CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.210/00241/2015

Dated this Tuesday, the 19th day of November, 2019

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

Nagraj Nathu Borase, Deputy Commissioner of Customs (Retd).
A-304, Sumer Castle, Meenatai Thakare Chowk,
Castle Mill Naka, Old Agra Road,
Thane (West) 400 601. **- Applicant**
(By Advocate Ms. S.V.Gokhale)

Versus

1. Union of India, Through the Secretary to the Govt. of India (Ad-VB), Central Board of Excise & Customs, Ministry of Finance, Room No.615, 6th Floor, 'C' Wing, HUDCO Vishala Building, Bhikaji Kama Place, R.K.Puram, New Delhi 110 066.

2. The Commissioner Customs (General) Mumbai, Custom House, Ballard Estate, Mumbai 400 001. **- Respondents**

(By Advocate Shri N.K.Rajpurohit)

Order reserved on 30.07.2019
Order pronounced on 19.11.2019

ORDER
Per : Dr. Bhagwan Sahai, Member (Administrative)

Shri Nagraj Natho Borase, retired Deputy Commissioner of Customs filed this OA on 16.03.2015. In it he has sought quashing and setting aside of order dated 04.08.2014 passed by Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India, imposing a penalty of withholding 30% of his monthly pension for

five years. He also seeks cost of this application.

2. Summarized facts:-

2(a). The applicant has stated that during 2005-2006 and 2006-2007, he was posted as Assistant Commissioner of Central Excise, Pune-I, Commissionerate, when he held additional charge of Inland Container Depot (ICD), Miraj from July 2005 to August 2006. During January to July, 2006, one M/s Ruchika International, Mumbai, a Merchant Exporter used to export textile articles/fabrics from the ICD, Miraj under Duty Entitlement Pass Book (DEPB) Scheme.

2(b). Based on intelligence gathered by officers of Pune Customs, consignments covered under shipping bills No.9000016, 9000017 and 9000018 of M/s Ruchika International dated 12.07.2006 were intercepted. In those bills, DEPB benefits of Rs.16,76,995/- would have been entitled for the exporter, which he was going to avail of but was averted due to

interception of the live consignment in respect of those three shipping bills.

2(c). Representative samples of textiles articles covered under those bills were sent to Bombay Textiles Research Association (BTRA), Mumbai who reported Free on Board (FOB) value of the goods under export declared by M/s Ruchika International as overstated. Investigation revealed that from January 2006 to July 2006, M/s Ruchika International had made exports under 50 shipping bills from ICD, Miraj and had obtained nineteen DEPB licences related to 45 shipping bills from Director General Foreign Trade (DGFT), Mumbai which would have entitled him duty exemption of Rs.1,53,79,609/-.

2(d). The investigation further revealed that DGFT, Mumbai had already revoked/cancelled seventeen licences of M/s Ruchika International for resorting to fraudulent documentation like Bank Realization Certificate (BRC) and also imposed penalty of Rs.12,88,34,000/-. During the investigation

by Customs Pune, it was found the record of M/s Ruchika International at ICD, Miraj was also missing.

2(e). Thereafter, the applicant was served memorandum of charges No.18/2010 under Rule 14 of the CCS (CCA) Rules, 1965 dated 26.07.2010, issued by CBEC, Department of Revenue, Ministry of Finance, Government of India, alleging his failure to maintain record, ascertain correct FOB value, draw samples, verify permission from the Commissioner of Customs for the exporter to dispatch material under self-basis clearance without assistance of a Customs House Agent (CHA) and raise doubts as to why the Exporter was using facility of ICD, Miraj (copy Annex at A-2).

2(f). The Inquiry Officer Shri Bodkhe submitted his inquiry report dated 30.10.2012, holding charge of dereliction of duty, negligence and supervisory failure as proved against the applicant (Annex A-3). The applicant submitted his comments on the inquiry report on 30.09.2013. After

considering his reply, the respondents consulted UPSC which furnished its advice on 26.03.2014 (Annex A-5) for withholding 30% monthly pension of the applicant for five years. Thereafter, the impugned order imposing the penalty was issued by the respondents on 04.08.2014 (Annex A-1). Therefore, this OA has been filed.

3. Contentions of the parties:

In the OA, rejoinder and during the arguments of the learned counsel for the applicant on 26.07.2019, the applicant has contended that-

3(a). in the entire disciplinary proceedings against him, there was no allegation of dishonesty or deliberate negligence on his part and no *mala fide* intention on his part has been proved. The impugned order issued by the respondents is without application of mind, against principles of natural justice and therefore, it should be set aside;

3(b). no dishonest motive was spelt out in the charge memorandum nor any such thing emerged during the inquiry to show that he had acted negligently with dishonest motive. It is baseless to hold him responsible for the missing record of M/s Ruchika International at ICD, Miraj because there is no evidence that he was custodian of that record or he was instrumental in destroying or misplacing it;

3(c). he was posted at Pune and was holding additional charge of ICD, Miraj, only one LDC was posted there on regular basis, who was custodian of record and as and when he attended the export related work at ICD, Miraj, all relevant registers or record were placed before him and during the investigation of the case he was never asked to produce that record;

3(d). under the Customs Law and Procedure, samples of export consignments are drawn only when valuation of goods or composition of goods is disputed. In case of M/s Ruchika International, samples were not drawn because

there was no reason for the applicant to suspect correctness of FOB value declared by the Exporter. In terms of Custom's circular dated 08.12.1997, ascertaining of Present Market Value (PMV) is necessary when there is variation of more than 150% between the ARE1 Value and FOB Value. In case of M/s Ruchika International, there were no such variations noted by him and hence, there was no need of verifying the PMV of the goods;

3(e). as per the above circular, verification of PMV/FOB value through market inquiry needs to be specifically assigned to Special Intelligence and Investigation Branch (SIIB) and not the Assessing Officer;

3(f). as per the clarification in Custom's Circular dated 07.09.2000, determination of PMV is warranted only in those cases where declared FOB value is many multiples of the PMV of the Export products. Since there was no material on record before the applicant warranting ordering of verification of the PMV, he did not get it done. Also no proof

was produced during the disciplinary proceedings about variation between the two values for the alleged overstatement of FOB value by that exporter. The basis used is only report of BTRA, Mumbai sought by the Investigating Agency but it was not relied upon during the Disciplinary Proceedings. BTRA is a test lab to verify and certify the composition of textiles and it is not a valuation expert. Extent of overvalue of goods and excessive DEPB benefits which would have been derived by the exporter were also not stated in the BTRA report;

3(g). the circuitous route adopted by M/s Ruchika International, did not raise any doubt in the applicant's mind and utilization of facilities of ICD, Miraj by that Mumbai-based exporter was seen by him as an achievement;

3(h). there are no instructions under Section 50 of the Customs Act, 1962 providing for prior permission of Commissioner of Customs for self basis clearance by an exporter. Therefore, such prior clearance was

not necessary for M/s Ruchika International. Such petty observation cannot be basis for disciplinary action against the applicant who is a retired Government servant;

3(i). for the shipping bills No.9000016, 17 & 18 dated 12.07.2006, the exporter could not derive DEPB benefits and for all past cases DGFT has safeguarded the interest of revenue by cancelling his licences and imposing penalty. Thus, there was no actual loss caused to the Revenue Department;

3(j). the applicant has attempted to benefit from the following Supreme Court case laws:

1) Union of India and others Vs. K.K.Dhawan, 1993 AIR 1478, 1993 SCR (1) 296.

2) State of Punjab and others Vs. Ram Singh Ex-Constable, 1992 (4) SCC 54.

3) Case of S.Govinda Menon Vs. Union of India, AIR 1967 SC 1274.

4) Union of India and others Vs. J.Ahmed, AIR 1979 SC 1022.

5) M/s Hindustan Steel Vs. State of Orissa, 1978 (2) WLT (J-159) (SC).

6) Malkiat Singh and Another Vs. The State of Punjab, AIR 1970 SC 713.

7) Gujarat High Court decision dated 05.09.1978 in Special Civil Application No.1570 of 1975.

8) State of M.P. Vs. Bani Singh, AIR 1990 SC 1308.

9) Bombay High Court decision dated 04.02.2008 in Writ Petitions Nos.1717, 1697, 1699, 1784 and 1871 of 2008 Writ Petition.

10) Husussainara Khatoon (IV) Vs. Home Secretary, State of Bihar reported in 1979 AIR 1369 : 1979 SCR (3) 532.

(i). The applicant claims that none of the parameters highlighted by the Apex Court in **K.K.Dhawan** case was there in his case. Misconduct of an employee may involve moral turpitude, it must be improper or wrongful behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not error of judgment, carelessness or negligence in performance of the duty. Its ambit has to be construed with reference to the subject matter and the context wherein the term misconduct occurs by keeping in mind the scope of the statute and public purpose which it seeks to serve.

(ii). The applicant claims that none of his actions was wilful and the ratio in the above

decisions in **State of Punjab and others Vs. Ram Singh Ex-Constable, S.Govinda Memon Vs. Union of India, Union of India and others Vs. J.Ahmed and Malkiat Singh and Another Vs. The State of Punjab** is applicable to his case. Since he never acted in defiance of law, and whatever was done was in good faith as part of his official duty, the penalty cannot be imposed on him by the respondents.

(iii). The memorandum of charges was issued to the applicant in July 2006, the disciplinary action was initiated in July, 2010 and the order of punishment has been passed in August 2014, thus there was delay of nine years during the proceedings, which has not been explained by the respondents. Therefore, the action of the respondents deserves to be set aside. As per the Supreme Court decision in **Bani Singh** and decisions of Gujarat High Court as well as Bombay High Court, because of long delay during the departmental proceedings, the order of the respondents deserves to be set aside.

(iv). The Supreme Court decision in **Husussainara Khatoon (IV) Vs. Home Secretary, State of Bihar** also held that speedy trial is an essential ingredient of reasonable, fair and just procedure guaranteed by Article 21 of the Constitution. Since Speedy justice is a fundamental right, it was an obligation on the part of the respondents to have concluded the proceedings expeditiously which they did not.

(v). As per the Supreme Court decision in case of **B.C.Chaturvedi Vs. Union of India and others, AIR 1996 SC 484,** in the exercise of the powers of judicial review, the Court cannot normally substitute its own conclusion on penalty. But if the penalty imposed by an authority shocks the conscience of the Court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed or in exceptional and rare cases, order imposition of appropriate punishment with cogent reasons in support thereof. In view of this, the penalty imposed on the applicant being harsh and excessive, it

should be set aside. Delhi High Court decision in **Som Dutt and Another Vs. Commissioner of Police** dated 19.09.2018, set aside the order of the Tribunal asking for holding fresh inquiry; and

3(k). the order issued by the Commissioner of Customs, Pune on 30.04.2009 imposing a penalty of Rs.1,00,000/- on the applicant under Section 114 of the Customs Act, 1962 was set aside by the Central Excise, Service Tax Appellate Tribunal (CESTAT) by order dated 04.06.2015, following which the amount of gratuity withheld from the applicant was also released to him. Therefore, this OA should be allowed.

In reply, additional reply and during arguments of the learned counsel on 30.07.2019, the respondents contend that-

3(1). the impugned orders have been passed by the respondent authorities with proper application of mind and by adhering to principles of natural justice. The claim of the applicant is not correct that during the

entire proceedings and in the charge memo, there was no allegation of dishonesty or deliberate negligence or mala fide intention against him. Even during examination of the case of the applicant by the UPSC, it has been concluded that there was a clear case of dereliction of duty, negligence, complete supervisory failure and collusion and abetment in the commission of the offence involving vigilance angle in respect of the applicant which resulted in heavy financial loss to the Government;

3(m). during investigation of the matter from July 2006, record/registers pertaining to M/s Ruchika International at ICD, Miraj were not made available to the Investigating Officers by the applicant and other staff posted there. This shows that the record was not maintained by the applicant and his other staff posted there. Board's Circular No.10/1997 dated 17.04.1997 and Circular No.91/1998 dated 17.12.1998 do not stipulate that the record should be in the custody of the Assistant

Commissioner or Deputy Commissioner incharge of ICD but also did not specify in whose custody record can be kept. However, this does not mean that nobody should have kept the record. As the Assistant Commissioner/Deputy Commissioner being over all incharge of ICD, it was his duty to ensure compliance with the instructions of the Board by officers/staff under his charge in carrying out assigned duties.

3(n). the contention of the applicant that he had no opportunity to inspect ICD, Miraj cannot be accepted because he was the incharge of ICD for more than a year (from July 2005 to August 2006). It simply shows his casual approach towards his work. For ensuring maintenance of record in the office, it is not always necessary for the officer incharge or higher authorities to conduct inspections. The applicant as incharge of ICD, Miraj ought to have ensured keeping of the record pertaining to M/s Ruchika International in safe custody so that it can be made available

during investigation but the applicant did not do this;

3(o). it was duty of the applicant and officers involved in assessment and examination of export consignments to ensure that correctness of FOB value quoted is checked. For this market survey is not necessary for every consignment but M/s Ruchika International had exported consignments under 50 shipping bills from ICD, Miraj but in none of the shipping bills market inquiry was conducted or ordered by the applicant;

3(p). the investigation into the case proved that FOB value declared by the Exporter was inflated and therefore, the contention of the applicant that there was no material on record for him to suspect value of the FOB quoted by the Exporter is not at all convincing, particularly when M/s Ruchika International was based in Mumbai, he procured export items from Mumbai, then he claimed to carry those goods to ICD, Miraj for export

clearance and then after bringing the goods back to Mumbai exporting them through JNPT. Adoption of this circuitous route by the exporter should have alarmed the applicant to suspect foul play in the process because taking such route does not make a business sense for the exporter unless such an exporter tries to get undue benefit of that route. But the applicant failed in his duty to take adequate steps to ensure that the FOB value declared by the exporter was correct;

3(q). the applicant has failed to appreciate that though the claimed DEPB was not more than 50% of FOB, the exporter was claiming the DEPB benefits not due to him by inflating the FOB value. Therefore, the applicant cannot absolve himself by stating that he countersigned the shipping bills by trusting his subordinates. Those bills were countersigned by the applicant as token of the correctness of entries in those bills and by countersigning them, he has endorsed the inflated FOB value declared by the exporter.

Thus, he failed to exercise due diligence as an Assessing Officer;

3(r). transporting of the goods by M/s Ruchika International from Mumbai to ICD, Miraj (about 400 km away) and thereafter transporting them back to Mumbai and then exporting from JNPT has been claimed by the applicant as an achievement which is totally fallacious and misleading;

3(s). the claim of the applicant is also false that there was no instruction for taking prior permission of the Commissioner, Customs before allowing clearance on self basis. As per proviso (b) to Regulation 3 of the Customs House Agents Licensing Regulations 2004, an employee of a firm can transact business of import or export of goods on behalf of the said firm without appointing a custom House Agent only if he is holding an identity card or a temporary pass issued by the Deputy Commissioner of Customs. But M/s Ruchika International transacted his business without any CHA, such identity card or temporary pass

and therefore, the applicant failed to ensure compliance of that essential requirement;

3(t). the claim of the applicant that no loss was caused to the Department is totally false because M/s Ruchika International obtained 10 DEPB licences for 45 shipping bills for goods exported through ICD, Miraj and obtained DEPB credits of Rs.1,53,79,609/-, out of which Rs.1,01,57,409/- were utilized for import of goods. As incharge of ICD, Miraj, therefore, the applicant was thus responsible for this loss to the Department;

3(u). with reference to the case laws relied by the applicant, it is obvious that there was clear case of dereliction of duty, negligence, complete supervisory failure and collusion involving vigilance angle on the part of the applicant which has been proved in the disciplinary proceedings;

3(v). in the adjudication proceedings under the Customs Act, the Commissioner, Customs, Pune imposed on the applicant a penalty of Rs.1,00,000/- by order of 30.04.2009 because

of his collusion with the exporter and therefore, the Apex Court decision cited by the applicant is not applicable. Protection under Section 155 of the Customs Act, 1962 is not applicable in case of Departmental proceedings for misconduct under CCA (CCS) Rules, 1965. This view has also been upheld by the Hyderabad Bench of the Tribunal in case of the **D. Sukumar Vs. Chairman, CBEC** in its order dated 04.06.2007. The claim of the applicant that his action was not wilful in character and was in good faith is not acceptable in view of the Apex Court decision (2012) in case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others;**

3(w). after registration of the case against the applicant on 12.07.2006, the lengthy procedure involved in various steps such as recording Panchnama of the incident, statements of the various persons involved, including the applicant and other officers involved in the case with the exporter, and conducting detailed investigation of 45

shipping bills with regard to the missing record of the ICD, Miraj, then adjudication proceedings against the applicant under the Customs Act, etc has taken almost four years for finalizing the charge-sheet against him;

3(x). since the Commissioner of Customs Pune during the adjudication proceedings against M/s Ruchika International imposed penalty of Rs.1,00,000/- on the subject and also ordered that the department should separately examine initiation of departmental proceedings against him under CCS (Conduct) Rules, 1964, the departmental proceedings were initiated. However, those proceedings had to be kept in abeyance because of an appeal filed by the applicant in CESTAT, Mumbai against the order of the Commissioner of Customs Pune.

3(y). Additional Director General Vigilance, Mumbai and DG, Vigilance, New Delhi were also consulted after the preliminary inquiry on the draft memorandum of charges along with relied upon documents for issuing the charge-sheet and thereafter, the charge-

sheet was issued to the applicant by the Department of Revenue, Government of India on 26.07.2010. Therefore, as the required several procedural steps consumed a lot of time. There was no deliberate delay or negligence in conducting the disciplinary proceedings. Therefore the claim of the applicant that the charge-sheet was issued to him after long delay cannot be accepted. After receipt of the inquiry officer's report, it was also sent for second stage advice to CVC. The letter's advice was given to the applicant on 15.09.2009 for making representation. On receipt of his representation and on receipt of advice of UPSC, the order dated 04.08.2014 was passed by the CBEC, Department of Revenue, Government of India;

3(z). since the charges levelled against the applicant have been proved by the inquiry and he has been held guilty, the relief sought by the applicant in the OA cannot be allowed;

3(aa). the order dated 15.04.2016 was with respect to show cause notice issued to the applicant under Section 124 of the Customs Act, 1962 whereas in the OA the order of the Disciplinary Authority dated 04.08.2014 has been challenged. Therefore, the order of 15.04.2016 brought on record by the applicant issued by the Commissioner of Customs, Pune with respect to M/s Ruchika International in view of decision of CESTAT dated 28.04.2015 remanding the case for *de novo* adjudication is not relevant to this proceeding. In that order of CESTAT, the penalty imposed on the applicant and other officers was set aside, but in para 6.5 of that order, the three officers, including the applicants were held guilty of dereliction of duty to be proceeded in terms of CCS (CCA) Rules, 1965. In view of this, the document annexed at A-10 filed by the applicant i.e. the copy of the Commissioner of Customs, Pune dated 15.04.2016 need not be considered by this Tribunal.

3(ab). the respondents have relied on the following case laws:

(i). In Delhi High Court decision in (**Union of India and others Vs. P.K.Sharma**), WP No.6984/2009 decided on 28.06.2017, the order of the Tribunal dated 08.10.2007 was set aside holding that in disciplinary proceedings, the Disciplinary Authority has to see whether after going through the material on record and evidence, a reasonable and prudent man would have come to the conclusion that the delinquent officer has committed an act of misconduct. Preponderance of probabilities is not burdened with technicalities of rules and evidence. If after going through the evidence, the Disciplinary Authority finds the delinquent officer guilty of misconduct and that officer is not sufficiently able to rebut the finding, then the order of the Disciplinary Authority is good in the eyes of law.

(ii). Order of this Bench of the Tribunal dated 18.06.2019 in OA No.20/2013 (**Shri Omkar**

Laxman Ghanellu Vs. Union of India & Others) in which after considering the various Apex Court decisions on the subject, the order of the Disciplinary Authority holding the applicant therein guilty of misconduct or misbehaviour was upheld.

(iii). In case of **B.C.Chaturvedi Vs. Union of India and others** in Civil Appeal No.9830/1995 and **Union of India and Another Vs. B.C.Chaturvedi** in Civil Appeal No.3604/1998 decided on 01.11.1995, the Apex Court held that judicial review by the Court or Tribunal is a review of the decision making process and where findings of the Disciplinary Authority/Appellate Authority are based on some evidence, the Court or Tribunal cannot re-appreciate the evidence and substitute its own findings. The judicial review is not an appeal from a decision but its a review of the manner in which the decision is made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which

the authority reaches is necessarily correct in the eye of the Court. Therefore, in view of these case laws, the OA should be dismissed.

4. Analysis and conclusions:-

4(a). We have perused contents of the OA Memo and rejoinder filed by the applicant, reply and additional reply filed by the respondents, various case laws cited by the respective parties and have considered the arguments submitted by the learned counsels on both sides on 30.07.2019. We have also noted the views taken in the case laws cited by the respondents with reference to scope of judicial review of this Tribunal. Based on careful consideration and analysis of various facts and other aspects of the case, we conclude as follows:-

4(b). The contention of the applicant that in the charge-memo and during the entire proceedings, there was no allegation of dishonesty or deliberate negligence or mala fide intention on his part is unacceptable.

4(c). Similarly his contention that there was no application of mind by the respondents while passing the impugned order and natural principles of justice were not observed is fallacious. In fact charge I in the memorandum of charges specifically alleged missing of all records/registers of M/s Ruchika International at ICD, Miraj pointing out collusion and abatement on the part of the applicant with the fraud committed by that exporter. In the inquiry report and in the advice furnished by the UPSC (as submitted by the respondents), there were unambiguous conclusions of dereliction of duty, negligence, complete supervisory failure, collusion and abetement on the part of the applicant of the commission of the offence involving vigilance angle of fraudlent export which resulted in heavy loss to the Government.

4(d). The applicant's contention that he was not custodian of record of M/s Ruchika International at ICD, Miraj, he had not

inspected the record himself and during the investigation, he was not asked to produce the record are also false, misleading and laughable. The investigation carried out by the respondents clearly proved that the case record/registers pertaining to M/s Ruchika International were found missing from the ICD, Miraj. The respondents did not expect the applicant to keep the record of that exporter in his personal custody. However, as Officer Incharge of that depot, it was his duty to ensure that proper registers/record of the ICD clearances given to M/s Ruchika International were maintained in safe custody at ICD, Miraj. The applicant's abdication/evasion of responsibility in doing/ensuring this has been correctly held as a clear case of his failure in performing the assigned duty.

4(e). The next plea of the applicant is also fallacious that the samples of export consignments are drawn only when valuation and composition of goods are disputed.

4(f). His contention that no material was there on record before him warranting verification of the present market value of the exporters consignments is also not believable.

4(g). Still worse is the contention of the applicant that adoption of the circuitous route by that exporter for getting export clearance of this consignments at the ICD, Miraj was considered by him as an achievement. That exporter was carrying out large scale exports continuously (50 shipping bills have been mentioned in the case record) from January to July 2006, but the applicant did not draw any samples even for one consignment to cross check the declared FOB value of the consignments which justifiably raised legitimate suspicion of his connivance with the exporter in view of obtaining by the exporter of DEPB credits of Rs.1,53,78,609/-, out of which he utilized Rs.1,01,57,409/- for import of goods. Even then the applicant made an audacious claim that he countersigned

the shipping bills of the exporter for correctness trusting his subordinates.

4(h). Because of his proven abandoning and blatant evasion of his responsibility by the applicant for maintaining and or ensuring staff custody of fall record of the shipping bills of the exporter cleared by ICD, Miraj and for not cross-checking or verifying even one of the shipping bills based on which the exporter drew DEPB benefits of more than Rs.1,53,79,609/- for which the respondents had to impose penalty on him, the conduct of the disciplinary proceedings and punishment based thereon are fully justified.

4(i). The respondents have further pointed out open defiance and violation of their instructions by the applicant such as not ensuring taking of prior permission by the exporter from Commissioner of Customs for clearance on self basis, allowing that exporter to carry out transactions without any Identity Card or temporary pass, etc.

4(j). The respondents' explanation in

points No.3(v), 3(x), and 3(y) above about how the successive lengthy procedural steps consumed more time is issuing the charge-sheet to the applicant, keeping in abeyance of the proceedings in view of pendency of appeal filed by the applicant in CESTAT against the punishment order of Commissioner of Customs, Pune and consultation with UPSC, finalization of the punishment order took long time.

In addition we note that the Apex Court view in case of **Government of Andhra Pradesh and others Vs. V. Appala Swamy**, for delay in concluding the departmental proceedings against the delinquent officer no hard and fast rule can be laid down. Each case must be determined on its own facts. The principles upon which the proceedings can be quashed on ground of delay are where by reason of the delay, the employer condoned the lapses on the part of the employee. However, in the present case, we find that the applicant has not been able to make out a case of prejudice caused to him. Also as observed by the Apex

Court in case of **Secretary, Forest Department and others Vs. Abdur Rasul Chowdhury**, delay in concluding the disciplinary proceedings is not fatal to the proceedings and if the delay is explained satisfactorily then the proceedings should be permitted to continue. In **Chairman, Life Insurance Corporation of India and others Vs. M. Masilamani**, the Apex Court observed that the court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the present case the respondents have satisfactorily explained the reasons for delay in concluding the proceedings against the applicant.

4(k). Similarly, the various case laws relied upon by the applicant are also of no help to him as rightly contended by the respondents.

4(l). From the above discussion, we conclude that while conducting the

disciplinary proceedings, the respondents have provided adequate opportunity to the applicant for defending himself, thereby principles of natural justice have been observed and the punishment order has been passed by the respondent authorities with full application of mind and by following the required procedural steps such as consultation with the DG Vigilance before finalizing the charge-sheet and with the UPSC before finalizing the punishment order. Thus, we do not find any flaw or infirmity in the proceedings conducted against the applicant and the impugned orders passed by the respondents. The proceedings conducted and the impugned order were proper and fully justified. We do not find any merit or substance at all in the contentions of the applicant. The OA is thus devoid of merits and it deserves dismissal.

5. Decision:

The OA is dismissed. No costs.

(Ravinder Kaur)
Member (Judicial)
*kmg**

(Dr. Bhagwan Sahai)
Member(Administrative)