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ANIL MISHRA

v.

UNION OF INDIA AND ORS.
(Civil appeal No.4724 of 2008)

JULY 30, 2008

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[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

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Administrative Law – Executive action – Judicial review – Scope of – Adverse entry – Communicated to Appellant, Dy. Commissioner of Central Excise & Customs – Representation against – Rejected by Chief Commissioner by detailed speaking order – Further representation to Central Government also rejected – O.A. by Appellant before Tribunal, contending that the adverse entry had been made malafide – Dismissed – Writ petition before High Court also dismissed – On appeal, held: Three senior officers considered Appellant's case and rejected the same – Court cannot sit as an appellate authority over these orders – Chief Commissioner and Central Government are very high authorities and they considered the representations of Appellant – Moreover, no bias attributed to Chief Commissioner or to Central Government.

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Constitution of India, 1950 – Art. 136 – New Plea – Plea not taken before Tribunal or High Court – Held: Cannot be taken for the first time before Supreme Court.

Appellant was a Deputy Commissioner of Central Excise & Customs. An adverse entry was communicated to him for the year 2000-2001. Against the adverse entry, Appellant filed representation which was rejected by the Chief Commissioner. Against the order of Chief Commissioner, Appellant made further representation to the Central Government, which too was rejected. Appellant filed O.A. before the Administrative Tribunal, contending that the adverse entry had been made *malafide*. Tribunal rejected the O.A. Against the order, Appellant filed writ peti-

tion before High Court, which was also dismissed. Hence the present appeal. A

Dismissing the appeal, the Court

HELD:1.1.This is not a case where the adverse entry was not communicated to the Appellant. It was not only communicated but the Appellant made representation against the adverse entry, which was considered by the Chief Commissioner, who rejected the representation by a detailed speaking order. Further memorial to the Central Government has also been considered and dismissed. Thus three senior officers have considered the appellant's case and rejected the same. The Court cannot sit as an appellate authority over these orders. [Para 7] [545-G,H; 546-A-B] B C

1.2. The appellant submitted that the entries before 2000 and after 2000 were not adverse to the appellant, and hence the isolated entry for 2000 appears to be biased. This plea was not taken by the appellant before the Tribunal or the High Court, and hence cannot be allowed to be taken for the first time before this Court. If the appellant wanted to take this plea, he could have done it before the Tribunal or the High Court. Even if the entries before or after 2000 had not been communicated to him, he could have filed an application before the Tribunal or the High Court for summoning of these entries, and the Tribunal and the High Court could have summoned the same. However, the appellant filed no such application before the Tribunal for summoning these entries. Hence the appellant has himself to blame. Had the appellant taken such a plea before the Tribunal and the High Court, the respondent authorities would have had an opportunity to file a reply in rebuttal to this plea. Since the appellant did not take this plea before the Tribunal or the High Court, the department had no opportunity to reply to it. Hence one cannot allow this plea to be taken before this Court. D E F G H

A [Paras 8,9, 10] [546-C,E-H]

1.3. The Chief Commissioner and the Central Government are very high authorities and they considered the representations of the appellant. No bias has been attributed to the Chief Commissioner or to the Central Government. [Para 11] [547-A]

Tata Cellular vs. Union of India, AIR 1996 SC 11 – referred to.

Case Law Reference

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AIR 1996 SC 11

referred to Para 7

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4724 of 2008

D

From the final Judgment and Order dated 6/3/2006 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. CAT-3526 of 2006

P.N. Puri, Dhiraj and hari Shankar for the Appellant.

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Ashok Bhan, Aruna Gupta, Vandana Mishra and B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

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2. This appeal by special leave has been filed against the judgment of the Punjab and Haryana High Court dated 6.3.2006 in C.W.P. No.3526 of 2006.

3. Heard learned counsel for the parties and perused the record.

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4. The appellant Anil Mishra was a Deputy Commissioner of Central Excise & Customs, Central Government. He filed an O.A. before the Central Administrative Tribunal, Chandigarh Bench, challenging the adverse entry made to him for the year 2000-01 vide letter dated 16.1.2002.

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5. Against that adverse entry he had earlier filed a representation which was rejected by the Chief Commissioner by order dated 14.7.2003. Against the order of the Chief Commissioner, the appellant made further representation to the Central Government, which was rejected by the Competent Authority of the Central Government, which has been conveyed by the Under Secretary to the Government of India by his letter dated 30.9.2004.

5. Before the Tribunal the appellant submitted that the adverse entry had been made *malafide*. This fact had been considered by the Tribunal in para 9 of its order and the Tribunal observed that the appellant had not brought to its notice any extraneous factor or reason as to why the concerned authority should have acted in a *malafide* manner. Moreover, the appellant's representation against that adverse entry was rejected by the Chief Commissioner, and his further representation to the Central Government was also rejected. Hence the Tribunal rejected the OA of the appellant.

6. Against the order of the Tribunal, the appellant filed a writ petition before the High Court, which was also dismissed. The High Court noted that the plea of bias had been considered by the Tribunal after an examination of the files and was rejected. The High Court also observed that the appellant's representation was rejected by the Chief Commissioner, who was a very senior officer, after seeing the record of the appellant, and the memorial filed by the appellant was also rejected vide order dated 30.9.2004.

7. We have perused the record and heard the learned counsel for the parties, and we see no reason to interfere with the orders of the High Court or the Tribunal. This is not a case where the adverse entry was not communicated to the appellant. It was not only communicated but the appellant made representation against the adverse entry, which was considered by the Chief Commissioner, who rejected the representation by a detailed speaking order of 5 pages. Further memorial

- A to the Central Government has also been considered and dismissed. Thus three senior officers have considered the appellant's case and rejected the same. We cannot sit as an appellate authority over these orders. The scope of judicial review of administrative orders is limited as has been repeatedly
B held by this Court, vide *Tata Cellular vs. Union of India*, AIR 1996 SC 11.

8. Learned counsel for the appellant submitted that the entries before 2000 and after 2000 were not adverse to the appellant, and hence the isolated entry for 2000 appears to be
C biased. This plea was not taken by the appellant before the Tribunal or the High Court, and hence we cannot allow it to be taken for the first time before us. Learned counsel for the appellant submitted that the appellant was not aware of the good entries before and after the year 2000, and hence the appellant
D could not bring it to the notice of the Tribunal and the High Court. He also submitted that the entries before the year 2000 and after the year 2000 are good entries, and this shows that the isolated entry in the year 2000 was for extraneous considerations.

- E 9. We are of the opinion that if the appellant wanted to take this plea, he could have done it before the Tribunal or the High Court. Even if the entries before or after 2000 had not been communicated to him, he could have filed an application
F before the Tribunal or the High Court for summoning of these entries, and the Tribunal and the High Court could have summoned the same. However, the appellant filed no such application before the Tribunal for summoning these entries. Hence the appellant has himself to blame.

- G 10. Had the appellant taken such a plea before the Tribunal and the High Court, the respondent authorities would have had an opportunity to file a reply in rebuttal to this plea. Since the appellant did not take this plea before the Tribunal or the High Court, the department had no opportunity to reply to it.
H Hence we cannot allow this plea to be taken before us.

11. The Chief Commissioner and the Central Government are very high authorities and they have considered the representations of the appellant. No bias has been attributed to the Chief Commissioner or to the Central Government. A

12. For the reasons given above, we find no merit in this appeal and hence it is dismissed. No costs. B

B.B.B.

Appeal dismissed.