

LOKPAL OF INDIA
Plot No.6, Institutional Area, Phase-II
Vasant Kunj, New Delhi - 110070

Complaint No. : 163/2024

Date : 09.01.2025

Coram : **Shri Justice A.M. Khanwilkar**
Chairperson

Shri Justice L. Narayana Swamy
Member

Shri Justice Sanjay Yadav
Member

Shri Sushil Chandra
Member

Shri Ritu Raj Awasthi
Member

Shri Pankaj Kumar
Member

Shri Ajay Tirkey
Member

ORDER

1. The complaint is against the Assistant Commissioner of Customs.
The complainant alleges that his consignment of sample of food items which had come from Japan on 02.06.2023 was held up by



the Customs. In spite of many visits to the Foreign Post Office his consignment was not released. The Customs Department has asked for FSSAI Certificate and the Bank Statement to get the consignment released. It is also alleged that certain officers wanted some favours and few packets of the sample. On non-delivering the same, the officer-on-duty threatened not to release the shipment and later on, after three months, without submitting FSSAI certificate, the consignment was released when it was of no use to the complainant.

2. Considering the allegations, CVC was directed vide Order dated 19.07.2024 to conduct Preliminary Inquiry through CVO, CBIC under Section 20(1) of the Act, 2013. After availing extension of time, CVC, vide OM dated 19.09.2024 forwarded the Preliminary Inquiry Report dated 17.09.2024 of CVO of CBIC along with the comments of the Competent Authority.
3. After considering the allegation and sequence of events, the conclusion arrived by the Inquiry Officer is as under :-

“In the process of examination of the shipments imported from Japan by the importer (complainant in the instant matter), Shri (xxxxxx), Inspector, (who has conducted the examination of

 2

the parcels on 10.06.2023) detained the parcels, on inappropriate grounds as in his statement, he stated that the goods were detained as prima facie appear to be undervalued and it is only on 23.06.2023 i.e., on the same day when he met the importer, it is mentioned in the remarks column of the examination sheet that "FSSAI NoC required" by him. The parcels detained by him on 10.06.2023, were seem to be detained on wrong grounds as the parcels were having declaration in the form of CN-22, having details such as value, weight etc. already pasted upon them, therefore, no other value evidence should have been required as their value was already declared and the parcels were declared as "Gifts" and therefore the question of seeking the Bank Statement for verifying the transaction does not arise. Further, Shri (xxxxxx), Superintendent, issued a D-Call Notice on 19.06.2023, after 9 days after the examination of the parcels i.e., on 10.09.2023, also the date of detention mentioned in the D-Call Notice was 15.09.2023, which is factually wrong as the parcels were sent for Xray examination on 02.06.2023, from where they were marked for detailed examination which was conducted on 10.06.2023. In the D-Call notice dated 19.06.2023 also, nowhere it was mentioned regarding requirement of FSSAI NoC. As the D-Call Notice was issued by the then Superintendent Shri (xxxxxx) and the examination was done by the then Inspector Shri (xxxxxx), it was the responsibility of the Inspector to examine the parcels with respect to the guidelines as mandated while processing food items imported at FPO and note down any deviation from the same in the remarks column of the examination sheet, so that the Superintendent. who is issuing the D-Call Notice should

 3

have been aware of the proper reasons and those reasons are entered in the D-Call Notice issued by them. Moreover, it was not ensured by Shri (xxxxxx) that D-Call Notice with proper reason for detention is issued, as already elaborated above the grounds on which the D-Call Notice was issued does not seem to be viable, on the other hand as there was requirement to comply with the FSSAI guidelines, nothing related to that was mentioned in the D-Call Notice, which was issued without the approval of the Assistant Commissioner as prescribed in the Standard Operating Procedure for Foreign Post Office, New Delhi w.e.f 01.11.2017 issued by the Commissioner of Customs ACC (Export). Further, Sh. (xxxxxx), issued the letter dated 28.07.2023 to the Importer informing him to comply with the FSSAI guidelines. The letter was issued, informing the Importer to comply with the guidelines as laid down in the FSSAI Act and the instructions in the Public Notice No. 18/2017-18 dated 21.11.2017, issued form File No. VIII(12)/ACE/Tech/PN/34/2017/2017-18 by the Commisioner of Customs (Export), New Delhi, which is mandatory requirement for import of food items at FPO. When the importer was informed about the requirement of FSSAI documents, the same should have been sought form the Importer. However, the parcels were released by then Inspector Sh. (xxxxxx) on 18.08.2023 without confirming that the required documents related to FSSAI guideline have been submitted by the importer or not. Also Shri (xxxxxx) has counter signed the examination sheet along with the Inspector Shri (xxxxxx), who has released the parcel, overlooked the fact that whether the importer has complied to the guidelines as laid down in FSSAI Act and the instructions in the Public



4

Notice No. 18/2017-18 dated 21.11.2017, issued from File No.VIII(12)/ACE/Tech/PN/34/2017/2017-18 by the Commissioner of Customs (Export), New Delhi which is mandatory requirement for import of food items at FPO. Also the parcels were released without the knowledge of the then Assistant Commissioner, Shri (xxxxxx). However, Shri (xxxxxx) has failed to pass on proper instructions to his subordinate staff to not release the parcels without his knowledge. ”

4. The final conclusion arrived by IO is as under:

“Thus, all the above mentioned five officials have shown gross negligence in their duties, as they have failed to act with due diligence. These officials also need to be reprimanded for these acts of omission and commission as they have acted without due diligence while performing their duties.”

5. The final recommendations of the DGOV with the approval of the Competent Authority are as under:

“Though the allegations levelled by importer/complainant regarding demand of 02-03 packets, inordinate delay in release of parcels and misuse of power against the officers of customs FPO, New Delhi are un-substantiated. However, the allegation regarding release of parcel without FSSAI Certificate is found substantiated. Apart from this the manner in which the matter has been dealt has also

shown omission and commission on part of the officials of customs who have handled the instant matter and accordingly, action against the erring officers is warranted which is being recommended as under:

- a) Shri (xxxxx): - For the acts of omission and commission Shri (xxxxx), Inspector seems to have violated Rule 3(1)(ii), 3(1)(iii), 3(1)(viii), 3(1)(xvi), 3(1)(xix), 3(1)(xxi) of CCS (Conduct) Rules, 1964 and accordingly liable for RDA(Major) Under Rule 14 of CCS(CCA) Rules, 1965.
- b) Shri (xxxxx): - For the acts of omission and commission Shri (xxxxx), Supt. seems to have violated Rule 3(1)(ii), 3(1)(iii), 3(1)(viii), 3(1)(xvi), 3(1)(xix), 3(1)(xxi) of CCS (Conduct) Rules, 1964 and accordingly liable for RDA(Major) Under Rule 14 of CCS(CCA) Rules, 1965.
- c) Shri (xxxxx): - For the acts of omission and commission Shri (xxxxx), Assistant Commissioner, now Retd. seems to have violated Rule 3(1)(ii), 3(1)(xxi), 3(2)(i) of CCS (Conduct) Rules, 1964 and made himself liable for initiation of RDA(Minor) Under Rule 16 of CCS(CCA) Rules, 1965. Since the officer has retired on superannuation on 31.07.2023, minor penalty proceedings cannot be initiated.
- d) Shri (xxxxx): - For the acts of omission and commission Shri (xxxxx), Inspector, seems to have violated Rule 3(1)(ii), 3(1)(iii), 3(1)(viii), 3(1)(xvi), 3(1)(xix), 3(1)(xxi) of CCS (Conduct) Rules, 1964 and

made himself liable for initiation of RDA(Major) Under Rule 14 of CCS(CCA) Rules, 1965.

e) Shri (xxxxx): - The acts of omission and commission on the part of Shri (xxxxx), Assistant Commissioner shows only supervisory failure/lapse on his part and accordingly he has made himself liable for Administrative Warnings, to be more careful and cautious while performing his duties in future."

6. The Inquiry Officer after dealing with each of the allegations also concluded in Para 4.5.6 that:

"there is a vigilance angle in terms of CVC instructions in the Vigilance Manual".

7. Therefore, vide Order dated 03.10.2024, the Full Bench issued Show Cause Notice to the Respondent Public Servants (RPSs) for giving them an opportunity of hearing as to why one or more options under Section 20(3) of the Act should not be resorted to on the basis of report of IO and the comments of the Competent Authority. The notice was also issued to the Complainant with an option to remain personally present or to authorise his representative.

8. Pursuant to order dated 03.10.2024, on 05.11.2024, RPS-1, RPS-2, RPS-4 & RPS-5 attended hearing in person and submitted their written submissions mentioning that their written submissions may

be taken as their oral submissions. Neither the complainant was present nor any communication on his behalf was received. RPS-3 was not personally present. Instead, he submitted the communication dated 19.11.2024 to the Registry, Lokpal vide e-mail, through which he requested for copy of some of the documents and requested for another date of hearing. Accordingly, vide Order dated 05.11.2024, he was given an opportunity of being heard on 02.12.2024. However, vide his reply dated 19.11.2024 he submitted his written submissions and requested for treating them as oral submissions and he requested for dispensing his personal hearing which was accordingly accepted vide Order dated 26.11.2024.

9. We have perused the submission of all RPSs which are summarised as under :

- i. Submission of RPS-1 (Shri xxxx), Inspector, CBIC – It has been submitted by him that he joined the Section on 07.06.2023. In this case, after examining the goods on 10.06.2023, it appeared undervalued to him and to the Superintendent and relevant assessment sheets were handed over to the postal authorities for further necessary action stating that the goods are detained. He further submitted that he had reasonable belief of undervaluation. Keeping in view the food items, weight of items (collectively 35 kgs

approximately), he formed an opinion that the same can be detained based on nominal declared value of Rs. 400(approx.) only.

He further submitted that he was not involved in subsequent clearance of the subject goods as he was transferred on 28.07.2023 from the Speed Post Import Section. He has requested to consider the said case as *bonafide* act on his part, as there was no element of *mens rea* at all in the entirety of the case. He never opined for release of subject goods keeping in view the requirement of FSSAI certificate. He further requested that his role may not be considered as a vigilance angle as he being the then Inspector of FPO during the relevant time had done the acts which were within the purview as Inspector under the Customs Act, 1962 and the listed SOP.

- ii. Submission of RSP-2 (Shri xxxxx), Supttd, CBIC – He submitted that he had joined the Speed Post Import Section on 07.06.2023 and subject goods/parcels were presented before Shri xxxxxx, Inspector on 10.06.2023 only. Hence, the delay if any, from 02.06.2023 to 10.06.2023 is not on the part of Customs at all and also not on his part. After examining the goods on 10.06.2023 by the Inspector, it appeared undervalued to the Inspector and to him also. Thereafter, the relevant assessment sheet was handed over to the postal authorities for further necessary actions, stating that the goods are detained and subsequently, the requisite documents were requisitioned by him by issuing D-call letter dated 19.06.2023

to the consignee/ complainant in the present case. But delay is not attributable to the Customs side, as the Postal Staff initially compiles the assessment sheets over a period of time and then submits the same to the Customs for issuance of D-call letter. Therefore, the delay on the issue of D-call letter is not on his part at all. It is further submitted that Shri (xxxxx), Inspector was transferred and relieved from Speed Imports Section on 28.07.2023 and Shri (xxxxx), Inspector joined on 29.07.2023 in the said section. Subsequently, Shri xxxxx, Inspector, directed the Postal Staff to open the carton boxes. On opening of the boxes, he saw that the goods in question and compared the same with the available documents i.e., the assessment sheet, CN22 Form pasted on the parcels and the contents of the parcels. Accordingly, on being satisfied with the description and the details, he assessed the values of the said goods by enhancing the original value and charge custom duty and gave remarks for release of the said goods on 18.08.2023 which was endorsed by him on 18.08.2023 at the assessed value and the total duty as he found that the assessment as suggested by Shri (xxxxx), Inspector was correct and accepted. He, further added that he had never met or corresponded or had any kind of interaction with the complainant at any stage in any form. Therefore, it has been requested by him that the said acts are *bonafide* as there is no element of *mens rea* at all in the entirety of the case. It was also submitted by him that he was not aware of the other facts related to the requirement of FSSSAI Certificate as opined by the Assistant Commissioner, as he was not made



aware of such decision by the Assistant Commissioner. There was no documentary evidence available on record to understand that the complainant is required to submit any FSSAI Certificate. Therefore, Shri (xxxxx), Inspector, on 18.08.2023 suggested that the subject goods can be released without further delay and the conscious decision was taken on the spot and the subject goods were cleared as the value was already enhanced in the absence of appropriate invoice and bank statements and also being food items, mostly imported for personal use which are perishable in nature. It is further submitted that he released the parcel without the approval of the Assistant Commissioner as the Superintendent is the proper officer under Customs Act, 1962 to deal with the assessment of parcels. Hence, there is no express approval required from the Assistant Commissioner, under the Act. He also submitted that keeping in the interest of the revenue, being the then competent proper officer had taken a view, which is evident on record, but not due to any kind of *malafide* or any intention to cause any loss to the government of India. He requested his decision may be considered to be *bonafide* in nature.

- iii. Submission of RPS-3(Shri xxxxxx, Assistant Commissioner): The main allegation is against RPS-3. By a written submission dated 02.12.2024, he submitted that on 23.06.2023, the complainant has met him in his room, and told him about the detained parcel. The complainant had told him that the concerned inspector has raised the objection and

told that the FSSAI NOC is required for clearance of the subject parcels. The complainant had pleaded that FSSAI Certificate is not required for clearance of these parcels and he requested for clearance of parcels without FSSAI Certificate. He further submitted that as the goods were for the commercial purposes, the FSSAI NOC certificate so required was communicated to the complainant which is also confirmed by the complainant in his mail dated 27.06.2023. Therefore, there was no apparent delay in taking action on his part. He has submitted that the further action could be arising only when the importer/consignee submitted the requisite documents. After his visit on 23.06.2023, he do not remember to have received any requisite documents including FSSAI Certificate for release of subjects of goods till 31.07.2023 when he was superannuated and relieved from his duties. Hence, any delay in this issue, is not on his part at all. He had further submitted that he had acted under *bonafide* belief to the best of his understanding at the relevant time and all his actions were in the knowledge of the Supervisory Officers. He has further submitted that the entire process from the date of arrival of goods at Foreign Post Office, till they are cleared after due assessment is *prima facie*, limited to the role of Inspection/examination by the concerned Inspector and for the assistance and clearance thereof, is limited to the concerned Superintendent. He, being the then Assistant Commissioner, further being administrative in nature, had examined the issue on hand, the moment he was informed about the issue on 23.06.2023 and was regularly

communicating with the higher officers as well as the Complainant, which is already a matter on record. It is further submitted that his role was very limited and was not involved in examination and assessment of the subject goods but, being the administrative in-charge, he performed his duties, which remained unquestioned, as they were legal and conveyed to the complainant as well as higher officers.

- iv. Submission of RPS- 4 (Shri xxxxx, Inspector, CBIC): He has submitted that he was posted in the FPO with effect from 29.07.2023 and remained there till 18.09.2023. It is submitted that after assuming the charge of Inspector on 29.07.2023, he came to know about the pending matter of non-release of subject goods of the complainant on 18.08.2023. Accordingly, he provided the tracking ID Number to the postal staff so that they can present the subject goods/parcels and examination/ Assessment sheet of the said parcels on the examination table. Subsequently, he directed the postal staff to open the carton boxes. On opening the boxes, he saw that the goods in question and compared the same with the available documents i.e., the assessment sheet, CN-22 Form pasted on the parcels and the contents of the parcels. On being satisfied with description and the details, he assessed the value of the said goods and levied the custom duty at the rate of 42.80% which was duly endorsed by the Superintendent on 18.08.2023 and the goods were released. He submitted that the requirement of FSSAI Certificate was not mentioned in the D-call letter dated 19.06.2023. Therefore, the same was not considered. It was also submitted that he had never met or



corresponded or had any kind of talk with the complainant at any stage in any form. He submitted that his said acts are *bonafide* and there is no element of *mens rea* in the entirety of case as much as that he had opined for release of the subject goods in the interest of the consignee/ complainant as well as keeping in view that no loss is caused to Government of India. The issue of FSSAI Certificate was opined to be non-existing in the instant case at the time of release of goods. He, being the examining officer, was required to form an opinion, which he did it in a *bonafide* manner. There was no documentary evidence available on record to understand that the complainant was required to submit any FSSAI Certificate because of the commercial intent. He further requested that all his actions may be considered without any *mens rea* or deliberated motive tantamount to loss to the Government Revenue or that acted against the interest of the Government of India.

- v. Submission of RPS: 5 (Shri. Xxxxxx, Asstt. Commissioner) - He has submitted that he had joined the office on 01.08.2023 after the retirement of Shri (xxxxx), the then Assistant Commissioner. He further submitted that there is no complaint against him and there is no charge of any act of bribe that to have been sought by him or in his direction at any point of time. He submitted that after assuming the charge of Assistant Commissioner, the pending of non-release of the subject goods of the Complainant came to his notice on 01.08.2023 itself as there was a pending reply to be made

against appeal in a CPGRAMS filed by the complainant to the headquarters. The subject goods were released by the concerned Inspector and the Superintending as on 18.08.2023 at their level. He was not aware of the clearance of the parcels on that day and no directions were given by him to clear those parcels without ensuring mandatory requirements. The officers involved in the clearance were well aware that certain compliances are pending from the consignee's end in this case. He came to know about the clearance of the said goods when he received e-mail from the complainant on the official e-mail on 30.08.2023 where the complainant informed regarding the clearance of the said goods without FSSAI NOC. Thereafter, immediately he asked the explanation of the concerned Inspector Shri xxxxx to explain reasons for release of the foreign goods. In his reply, Shri xxxxx mentioned that the requirement of FSSAI Certificate was not mentioned in the D-Call letter dated 19.06.2023. He further submitted that it was not in the knowledge of the Staff who cleared the goods. There is a requirement of FSSAI Certificate/ NOC and it was the basic duty of the staff to ensure that all legal requirements are met before clearance of any parcel. The subordinate staff admitted that in the instant case, neither they sought any guidance from him before release nor did they inform after their clearance. It was further submitted by him that the IO had already held that none of eleven ingredients were said to have been existed or violated by him or through his actions during the period 01.08.2023 (being the date of joining) to

18.08.2023 (being the dated of release of subject goods). Therefore, he submitted that none of his actions during the subject period were considered for any violation of the given eleven ingredients. As per the IO'S report dated 17.09.2024, all the said ingredients were examined from vigilance angle and that no evidence was found on such examination with reference to his role and his actions thereof. Therefore, subsequent opinion that he is liable for administrative warning is improper and against their own earlier opinion.

10. The I.O. also submitted observations on the comments of RPS-3 that the D-Call Notice should have been issued with the approval of the DC/AC. The role of officer being the Supervisory, he should have ensured a timely and proper action in respect of all the said parcels. Further, he has issued the letter to importer on 27.08.2023 requiring under the FSSAI NOC and D-Call Notice were being issued without his approval and knowledge but he failed to take appropriate and timely action. The IO has further submitted that it should have been the responsibility of Shri xxxxx, the then Asstt. Commissioner to ensure that the parcels are attended on priority basis and the actions should have been taken as per the Customs Law.

11. We have considered the Preliminary Inquiry Report, comments of the Competent Authority, written submissions of the RPSs, relevant documents and the Observation of the IO. After considering the same, we are of the considered opinion that all the five officials have shown gross negligence in conducting their public duty as they have not acted with due diligence and devotion which has caused irregularities and delay at various levels in this matter. Therefore, we direct that under the provisions of section 20(3)(b), the department (CBIC) should initiate the departmental proceedings against the concerned public servants for the lapses and negligence on their part which have been highlighted by the IO and the Competent Authority.
12. Before parting, we would like to direct the Chairman, CBIC to formulate and issue proper SOPs at the FPO for timely and speedy delivery of the imported goods especially, perishable items so that the persons at large are not harassed.
13. The copy of this order be sent to the Chairman, CBIC on his official e-mail id for necessary compliance.
14. The Status Report regarding the progress of departmental proceedings should be submitted within three months.



15. The complaint is disposed of accordingly.

Sd/-
(Justice A.M. Khanwilkar)
Chairperson

Sd/-
(Justice L. Narayana Swamy)
Member

Sd/-
(Justice Sanjay Yadav)
Member

Sd/-
(Sushil Chandra)
Member

Sd/-
(Justice Ritu Raj Awasthy)
Member

Sd/-
(Pankaj Kumar)
Member

Sd/-
(Ajay Tirkey)
Member


(Court Master)

/sk/