भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय MINISTRY OF FINANCE
राजस्व विभाग DEPARTMENT OF REVENUE
केन्द्रीय अप्रत्यक्ष कर और सीमा शुल्क बोर्ड
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
आयुक्त का कार्यालय OFFICE OF THE COMMISSIONER
केन्द्रीय कर एवं केन्द्रीय उत्पाद शुल्क CENTRAL TAX & CENTRAL EXCISE
केन्द्रीय राजस्व भवन, CENTRAL REVENUE BUILDING
आई. एस. प्रेस रोड, कोच्चि, I.S. PRESS ROAD, KOCHI-682 018
E-mail: cexcochi@nic.in Fax: 0484-2390608 Phone: 0484-2390404

GEXCOM/II/(39)/42/2020-ESTT

CIRCULAR

Please refer to MA No. 538/2022 in OA No. 862/2018 filed by 'All India Association of Central Excise Gazetted Executive Officers Kerala Unit' before the Hon'ble CAT, Ernakulam Bench for directing the respondents to give effect to the order dated 26.02.2019 in OA No. 862/2018 to all its members, irrespective of their date of joining the Association. Vide order dated 26.02.2019 the respondents were directed to grant grade pay of Rs 5,400/- to the applicants after 4 years of service in the grade pay of Rs 4,800/- with all consequential benefits.

The department duly complied with the Hon'ble Tribunal's order, extending benefits to the concerned association members. Now, the Hon'ble Tribunal vide order dated 08.09.2023 in MA 538/2022 (copy enclosed) has observed that "*From the stands taken by the Courts it is very obvious that the intention was to extend the benefit to all similarly place employees. In our considered view, all Superintendents of Central Excise, who have on completion of 4 years of service in the said scale of pay are entitled to get grade pay of Rs 5,400/-. Therefore, the respondents are bound to extend the benefits to all similarly placed employees With this direction, the MA is disposed of.*"

Now, Board vide letter A23011/44/2020-Ad.IIA-Part(2) dated 29.02.2024 (copy enclosed), has informed that the Department of Expenditure has advised to implement the court order of similarly situated persons provided the court orders are similar to the case covered in the Hon'ble Madras High Court order dated 06.09.2010 in WP No. 13225/2010. In the list of cases mentioned in the letter, order of Hon'ble Tribunal in MA No. 538/2022 has also been included.

In light of the above, all Commissionerates are requested to take necessary action for implementation of the Order of the Hon. Tribunal in MA No.538/2022, read with order in OA 862/2018 granting the benefit to all officers in the grade of Superintendent. This is issued with the approval of the competent authority.

Encl: As Above.

Signed by
Rani C R
Date: 11-04-2024 16:06:29

(Rani C R)
Additional Commissioner (P&V)

Copy submitted to :

1.The Chief Commissioner, Central Tax, Central Excise & Customs, Thiruvananthapuram Zone.
2.The Commissioner, Central Tax & Central Excise, Thiruvananthapuram Commissionerate.
3.The Commissioner, Central Tax & Central Excise, Kochi Commissionerate.
4.The Commissioner, Central Tax & Central Excise, Kozhikode Commissionerate.
5. The Commissioner of Customs (Preventive), Kochi
6.The Commissioner of Central Tax & Central Excise (Audit), Kochi.
7.The Commissioner of Central Tax & Central Excise (Appeals), Kochi.
8.The Additional Director General, DGGI/ DRI Regional Unit, Thiruvananthapuram/ Kozhikode/ Kochi.
9. The Superintendent (Systems), Kochi Commissionerate - for uploading in website
10. The Official Language Cell, Kochi Commissionerate - for Hindi version

फाइल संख्या A23011/44/2020-Ad.IIA-Part(2)
भारत सरकार / Government of India
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
केंद्रीय अप्रत्यक्ष कर और सीमा शुल्क बोर्ड / Central Board of Indirect Taxes & Customs

नॉर्थ ब्लॉक, नई दिल्ली
दिनांक 29 फरवरी, 2024

सेवा में,

i. प्रधान आयुक्त, सीजीएसटी और केंद्रीय उत्पाद शुल्क मेरठ जोन।
ii. प्रधान आयुक्त, सीजीएसटी और केंद्रीय उत्पाद शुल्क , बेंगलुरु जोन।
iii. मुख्य आयुक्त, सीजीएसटी और केंद्रीय उत्पाद एवं सीमा शुल्क, भोपाल जोन।
iv. प्रधान मुख्य आयुक्त, जीएसटी और केंद्रीय उत्पाद शुल्क तमिलनाडु और पुडुचेरी जोन।
v. मुख्य आयुक्त , सीमा शुल्क, केंद्रीय उत्पाद शुल्क और सीजीएसटी, दिल्ली जोन।
vi. आयुक्त केंद्रीय कर और केंद्रीय उत्पाद शुल्क, कोचीन का कार्यालय।
vii. मुख्य आयुक्त केंद्रीय कर, केंद्रीय उत्पाद शुल्क और सीमा शुल्क, तिरुवनंतपुरम जोन।

Sub: Examination of the orders of CAT in various Benches regarding the implementation of orders similar to the M. Subrmaniam Case in W.P.No.13225 of 2010.

Sir / Madam,

I am directed to refer to the following Orders of various benches of the Hon'ble Central Administrative Tribunal:

S.No.	CAT Bench	O.A. No.	Order dated
1.	Allahabad Bench	832/2023	06.10.2023
2.	Bangalore Bench	363/2023	09.01.2024
3.	Jabalpur Bench	534/2019	15.01.2020
		441/2021 442/2021 446/2021 466/2021 467/2021	11.02.2022
		401/2022	07.07.2022
		578/2022	09.09.2022
		579/2022	09.09.2022
		758/2022	23.11.2022
		674/2022	15.12.2022
		697/2022	05.01.2023
		391/2022	21.03.2023
		979/2022	11.04.2023
		598/2022	18.09.2023
		955/2021	19.10.2023
4.	Chennai Bench	685/2022	01.03.2023
		026/2023	11.01.2023

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5.	Ernakulam Bench	MA No. 538/2022	08.09.2023
6.	Delhi Bench	1047/2022	04.05.2022

2. The matter has been examined in consultation with the Department of expenditure. The DoE has advised this Department to implement court order of similarly situated persons provided the court orders are similar to the case covered in the Hon'ble Madras high Court order dated 06.09.2010 in W.P. No. 13225/2010.

3. You are requested to accordingly take the action in the above mentioned cases for implementation of the same and report back compliance on priority.

4. Regarding the letter from O/o of the Commissioner CGST, Bhopal Zone dated 13.02.2024, the OA. No. 1171/2018 and OA No. 226/2023 of the Hon'ble CAT Jabalpur Bench has already been considered in the Board and letter dated 11.01.2024 has been issued .

5. This issues with the approval of the Competent Authority.

भवदीय,

Signed by
Avneesh Pratap Singh
Date: 29-02-2024 10:31:30

अवर सचिव, भारत सरकार
दूरभाष 011-23095528

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Central Administrative Tribunal
Ernakulam Bench

OA/180/00862/2018

Tuesday, this the 26th day of February, 2019.

CORAM
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

1. All India Association of Central Excise Gazetted
Executive Officers Kerala unit, Central Revenue Building,
I.S.Press Road, Cochin-682 018, represented by
its General Secretary Sri Arun Zachariah.P., aged 49 years,
S/o Late P.K.Zachariah, Superintendent of Central Excise,
O/o The Assistant Commissioner of Central Tax & Central Excise,
V. Publishers Building, Sreenivasa Iyer Road,
Kottayam-686 019.

2. G. Balagopal, aged 51 years
S/o Gopalakrishnan Nair,
Superintendent of Central Excise,
O/o the Superintendent of Central Excise,
Kottarakkara Range, Kottarakkara-691 506,
residing at "Sreevihar", Thazhathuvadakku P.O.,
Enath Via, Kollam-691 526.

3. E.Sreedhar, aged 52 years
S/o M.K.Unnikrishna Panicker,
Superintendent of Central Excise & Customs,
Thiruvananthapuram Zone,
Central Revenue Building, I.S.Press Road,
Cochin-682 018,
residing at B-14A, Summer Sands,
Classic Apartments, Thrikkakkara,
Cochin-682 021. Applicants

[Advocate: Mr.Shafik M.A.]

versus

1. Union of India represented by
Secretary, Department of Revenue
Ministry of Finance, New Delhi-110 001.

2. The Chairman
Central Board of Indirect Taxes & Customs
North Block, New Delhi-110 001.

3. The Chief Commissioner of Central Tax
Central Excise & Customs
Thiruvananthapuram Zone,
Central Revenue Building
I.S.Press Road, Cochin-682 018.

4. The Commissioner of Central Tax & Central Excise
Central Revenue Building
I.S.Press Road, Cochin-682 018. Respondents

[Advocate: Mr.V.A.Shaji, ACGSC]

This OA having been heard on 13th February, 2019, this Tribunal delivered the following order on 26.02.2019:

O R D E R

By Ashish Kalia, Judicial Member

This OA is filed by All India Association of Central Excise Gazetted Executive officers, Kerala Unit and 2 of its members – Sri G.Galagopal and Sri E.Sreedhar.

2. The applicants are aggrieved by the refusal of the respondents to grant the scale of pay of non-functional grade in the cadre of Superintendents of Central Excise, to the Inspectors of Central Excise on upgradation of pay, as per Govt of India instructions and CCS (RP) Rules. They seek the following relief:

> *Declare that the applicants are entitled for the benefits of Grade Pay of Rs.5400/- in PB-2 in non-functional basis after 4 years of service in the Grade Pay of Rs.4800/- in PB-2, either by way of ACP or MACP, with all consequential benefits.*

3. The brief facts of the case are that 1st applicant is the Kerala Unit of the Association representing the cadre of Superintendents of Central Excise. The Association is represented through its General Secretary and he is authorized to file this OA as per the resolution dated 28.6.2018. It is submitted that 2/3rd of the posts of Inspectors of Central Excise is filled up through direct recruitment on

the basis of examinations and personality test conducted by Staff Selection Commission followed by a physical test conducted by the Department. The post of Preventive Officer of Customs and Examiner of Customs in the Customs Houses of the Department are also filled by the same examination. The posts of Superintendents of Central Excise are filled by promotion from the post of Inspector of Central Excise. The post of Inspector of Central Excise is a highly stagnating cadre and a direct recruit Inspector gets his 1st and, in most cases, the last promotion after a period of 16 to 22 years. This has caused large scale resentment and frustration among the cadres. This is compounded by the fact that the equally placed cadres of Preventive Officer and Examiner of the Customs Department get their promotion within 6 to 10 years. In the subsequent promotion to the post of Assistant Commissioner also, the Examiners and Preventive Officers are way ahead.

4. As per the recommendations of 5th CPC, Assured Career Progression Scheme provides for 2 promotions in a span of 12 and 24 years of service. Inspector of Central Excise was in the pre-revised pay scale of Rs.6500-10500 and the Superintendent of Central Excise was in the per-revised scale of Rs.7500-12000. As per 6th CPC recommendations, the ACP Scheme was replaced by the Modified Assured Progression Scheme (MACP) providing for 3 financial upgradations in a span of 10, 20 and 30 years. Ministry of Finance accepted the 6th CPC recommendations with the modification, inter- alia, that Group-B officers of the Department of Post, Revenue etc will be granted Grade Pay of Rs.5400 in PB-2 on non-functional basis after 4 years of regular service in the Grade Pay of Rs.4800/- in PB-2. The Central Civil Service (Revised Pay) Rules, 2008 was also notified by the Government with effect from 1.1.2006 and

as per Section II of Part C of the First Schedule of the Rules, the Income Tax Officer, Superintendent, Appraiser etc (Customs & Central Excise) under the Department of Revenue have been granted Grade Pay of Rs.4800 and a Grade Pay of Rs.5400 after 4 years. The 2nd respondent, as per letter dated 21.11.2008, conveyed the clarification of the Department of Expenditure that the 4 year period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs.7500-12000 (pre-revised).

5. Subsequently , the 2nd respondent altered the above stand in consultation with the Department of Expenditure and as per letter dated 11.2.2009 (Annexure A2) it is stated that *"non-functional upgradation to the GP of Rs.5400 in PB-2 can be given on completion of 4 years in regular service in the GP of Rs.4800 in PB-II (pre-revised scale of Rs.7500-12000) after regular promotion and not account of financial upgraddation due to ACP"*. One of the members of the 1st applicant Association, Sri Ashoka Narayan who was placed in the GP of Rs.5400/- based on the above clarification and subsequently underwent a reduction in his salary, challenged Annexure A2 before this Tribunal by filing OA 151/2009. This Tribunal dismissed the OA as per order dated 26.9.2010. This was challenged before the Hon'ble High Court of Kerala in OP(CAT) No.276/2010. The Kerala High Court, as per judgment dated 8.12.2016 (Annexure A3) allowed the original petition, agreeing with the judgment dated 6.9.2010 in WP(C) No.13225/2010 of the Hon'ble High Court of Judicature Madras in the case of *M.Subramaniam vs. Union of India* and set aside Annexure A2 letter. The respondents, instead of complying with Annexure A3 judgment, approached the Hon'ble Supreme Court in SLP (Civil) No.17576/2017 against Annexure A3 and CA No.8883/2017 against the judgment of the Hon'ble High

Court of Madras. The Hon'ble Supreme Court dismissed all the department appeals. Consequently, all the members of the 1st applicant Association who became entitled to get the non-functional upgradation had given representations to implement the Supreme Court judgment. A review petition filed before the Hon'ble Supreme Court was also dismissed. Feeling aggrieved by the refusal of the respondents to grant non-functional grade pay, the applicants have approached this Tribunal with the present OA.

6. On notices being served, the respondents have filed a reply statement through Sri V.A.Shaji, learned ACGSC. It is submitted therein that as per clarification received from the Department of Revenue, non-functional upgradation to the Grade Pay of Rs.5400 in PB-2 can be given on completion of 4 years of regular service in the GP of Rs.4800/- in PB-2 after regular promotion and not on account of financial upgradation due to ACP or MACP. Thus it is clear that the officers who got a pre-revised pay scale of Rs.7500-12000 (corresponding to GP of 4800) by virtue of financial upgradation under ACP or MACP would not be entitled to the benefit of further non-functional upgradation to the GP of Rs.5400 on completion of 4 years of service. The respondents have prayed for dismissal of the OA saying that the prayer made by the applicants is not worthy of consideration.

7. Heard Sri Shafik M.A., learned counsel for the applicants and Sri V.A.Shaji, learned ACGSC on behalf of the respondents, at length.

8. In view of the judgment passed by Principal Bench in OA No.1707 of 2016, dated 11th April, 2018, allowing the OA, relying upon the judgment rendered by Hon'ble High Court of Madras in *M.Subramaniam vs. Union of India and others,* we find that present case is identical to the above mentioned

case case and is also covered by the judgment of the Hon'ble High Court of Kerala in *S.Ashoka Narayanan vs. Union of India and others* where the Hon. High Court of Kerala has held thus:

> *"We find that the view expressed by the Madras High Court is similar to the view expressed by us in the preceding paragraphs. There is no case for the respondents that they have challenged Exhibit P6 verdict passed by the High Court of Madras in W.P.(C) No.13225/2010 by way of appropriate proceedings before the Apex Court and hence, it has to be reasonably presumed that the said verdict has become final. We find that the course pursued by the Department in having reduced the Grade Pay of the petitioner (fixed as per Annexure A7 based on Annexure A5 as Rs.5400/-) to Rs.4800/- by placing reliance on Annexure A2, at the same time without making a reference to the earlier clarification issued by the very same Ministry as per Annexe A6, is not correct or sustainable."*

9. We are of the considered view that the aforesaid decision is applicable to the present case. Accordingly the OA is allowed. Respondents are directed to grant Grade Pay of Rs.5400/- to the applicants after 4 years of service in the Grade Pay of Rs.4800/-, with all consequential benefits. This order shall be implemented within a period of two months from the receipt of the order. No order as to costs.

[Ashish Kalia]
Judicial Member

[E.K.Bharat Bhushan]
Administrative Member

aa.

Annexures filed by the applicants:

Annexure A1:	Copy of the letter F.No.A.26017/98/2008-Ad.II.A dated 21.11.2008 issued by the 2nd respondent.
Annexure A2:	Copy of the letter F.No.A.26017/98/2008-Ad.II.A dated 11.2.2009 issued by the 2nd respondent.
Annexure A3:	Copy of the judgment dated 8.12.2016 of the Hon High Court of Kerala in OP(CAT) No.276/2010.
Annexure A4:	Copy of the judgment dated 10.10.2017 of the Hon Supreme Court in SLP(Civil) No.17576/2017.
Annexure A5:	Copy of the representation dated 7.3.2018 submitted before the 3rd respondent.
Annexure A6:	Copy of the order dated 11.4.2018 of the Principal Bench in OA No.1707/2016.
Annexure A7:	Copy of the judgment dated 23.8.2018 of the Hon Supreme Court in RP(C) No.2512/2018.
Annexure A8:	Copy of the representation dated 30.8.2018 submitted before the 3rd respondent.
Annexure A9:	Copy of the representation dated 19.3.2018 submitted before the 3rd respondent.
Annexure A10:	Copy of the representation dated 2.7.2018 submitted before the 3rd respondent.
Annexure A11:	Copy of the judgment dated 1.9.2017 of the Hon Supreme Court in SLP No.77457/2017.
Annexure A12:	Copy of the letter F.No.A-23011/07/2015 Ad.IIA dated 25.9.2018 issued by the 2nd respondent.

#49

क.प्र.अ (प्रक्रिया) नियम के नियम 22 के तहत निष्पादक प्रति
FREE COPY UNDER R.22 OF CAT (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

MA No.180/00538/2022
in
Original Application No. 180/00862/2018

Friday, this the 8th day of September, 2023

CORAM:

HON'BLE Mr. JUSTICE K. HARIPAL, JUDICIAL MEMBER
HON'BLE MR. K.V. EAPEN, ADMINISTRATIVE MEMBER

1. All India Association of Central Excise Gazetted Executive Officers Kerala Unit, Central Revenue Building, I.S. Press Road, Cochin-682 018, represented by its General Secretary, Sri Arun Zachariah P., aged 49 years, S/o Late P.K. Zachariah, Superintendent of Central Excise, O/o The Assistant Commissioner of Central Tax & Central Excise, V. Publishers Building, Sreenivasa Iyer Road, Kottayam, Pin-686 019.

2. G. Balagopal, aged 51 years, S/o G. Gopalakrishnan Nair, Superintendent of Central Excise, O/o the Superintendent of Central Excise, Kottarakkara Range, Kottarakara Pin 691 506, residing at "Sreevihar", Thazhathuvadakku PO, Enath Via, Kollam-691 526.

3. E. Sreedhar, aged 52 years, S/o M.K. Unnikrishna Panicker, Superintendent of Central Excise, O/o The Chief Commissioner of Central Tax, Central Excise & Customs, Thiruvananthapuram Zone, Central Revenue Building, I.S. Press Road, Cochin-682 018, residing at B-14A, Summer Leaves, Thissie Apartments, Thrikkakkara, Cochin-682 0[illegible] - Applicants

[By Advocate: Mr. Shafik M. Abdulkhadir]

Versus

1. Union of India,
Represented by Secretary, Department of Revenue,
Ministry of Finance,
New Delhi.

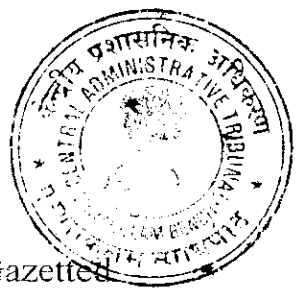
2. The Chairman,
Central Board of Indirect Taxes & Customs,
North Block, New Delhi.

3. The Chief Commissioner of Central Tax, Central Excise & Customs,
Thiruvananthapuram Zone,
Central Revenue Building,
I.S. Press Road,
Cochin-682 018.

4. The Commissioner of Central Tax & Central Excise,
Central Revenue Building,
I.S. Press Road, Cochin-682 018. - **Respondents**

[By Advocate : Mr.Shaji V.A.]

The application having been heard on 10.03.2023, the Tribunal on 08.09.2023 passed the following:



ORDER

Mr. Justice K. Haripal, Judicial Member

Applicants are the All India Association of Central Excise Gazetted Executive Officers, Kerala unit and two of its members. They filed the OA seeking grant of Grade Pay of Rs.5400/- in PB-2 on non-functional basis after 4 years of service in the grade pay of Rs.4800/- in PB-2 either by way of ACP/MACP with all consequential benefits. By order dated 26.02.2019 the OA was allowed and the respondents were directed to grant grade pay of Rs.5400/- to the applicants after 4 years of service in the grade pay of Rs.4800/- with all consequential benefits. There was a direction to implement

the same within a period of two months. Later, after extended periods of time, the said direction was complied with by the respondents. Now the applicants have approached the Tribunal with this MA for directing the respondents to give effect to the said order dated 26.02.2019 to all its members, irrespective of their date of joining the Association.

2. The facts of the case can be stated thus : Applicants 2 and 3 are Superintendents of Central Excise working in the Excise Gazetted Executive cadre. 1st applicant is their association represented by the General Secretary. CCS(Revised Pay) Rules 2008 provides for grant of grade pay of Rs.5400/- on non-functional basis after four years of service in the grade pay of Rs.4800/- to those who were in the pre-revised scale of Rs.7500-Rs.12,000/-. By way of clarification dated 21.11.2008 in Annexure A-1 it was made clear that on completion of 4 years on 01.01.2006 or earlier, an officer in the scale

the same within a period of two months. Later, after extended periods of time, the said direction was complied with by the respondents. Now the applicants have approached the Tribunal with this MA for directing the respondents to give effect to the said order dated 26.02.2019 to all its members, irrespective of their date of joining the Association.

2. The facts of the case can be stated thus : Applicants 2 and 3 are Superintendents of Central Excise working in the Excise Gazetted Executive cadre. 1st applicant is their association represented by the General Secretary. CCS(Revised Pay) Rules 2008 provides for grant of grade pay of Rs.5400/- on non-functional basis after four years of service in the grade pay of Rs.4800/- to those who were in the pre-revised scale of Rs.7500-Rs.12,000/-. By way of clarification dated 21.11.2008 in Annexure A-1 it was made clear that on completion of 4 years on 01.01.2006 or earlier, an officer in the scale of Rs.7500-Rs.12,000/- will be given non-functional upgradation with effect from 01.01.2006; if the officer completes 4 years after 01.01.2006, he will be given non-functional upgradation from such date on which he completes 4 years in the pay scale of Rs.7500-12,000/- (pre-revised). Later through Annexure A-2 clarification dated 11.02.2009, the Central Board of Excise and Customs altered the said position and insisted that non-functional upgradation to grade pay of Rs.5400/- in PB-2 can be given only on completion of 4 years of regular service in the grade pay of Rs.4800/- in PB-2 after regular promotion and not on account of functional upgradation due to ACP. In other words, it was clarified that grant of non-functional upgradation under ACP

will not entitle for the benefit of further financial upgradation in the pre-revised scale. The effect of Annexure A-2 is that, in order to grant grade pay of Rs.5400/- one should be in regular employment for four years with grade pay of Rs.4800/-. Merely covering 4 years of service after grant of financial upgradation under the ACP is not sufficient to grant grade pay of Rs.5400/-.

3. Annexure A-2 was challenged by one S. Ashoka Narayanan through OA 151/2009 before this Tribunal. That OA was dismissed by the Tribunal. Against the decision, Ashoka Narayanan filed OP(CAT) No.276/2010; by Annexure A-3 judgement dated 08.12.2016, the Hon'ble High Court reversed that finding and quashed Annexure A-2 to the extent that denied grade pay of Rs.5400/- to the applicant therein. In the said decision, the High Court also relied on the decision of the Hon'ble Madras High Court in the case of one **Subramaniam** in WP(C) No.13225/2010. The decision of the Madras High Court was confirmed by the Hon'ble Supreme Court in SLP.

4. As mentioned earlier by order dated 26.02.2019 the OA was allowed and ultimately the benefit was granted to all the applicants and members of the Association.

5. Now the applicants contend that the Association is an entity that continues in perpetuity and the members in its roll changes periodically consequent to retirement and enrolment/admission of new members and superannuation of existing members. Basing on the judgements of the High Court and the Supreme Court, the new members approached the respondents for extending the benefit of the order of this Tribunal in MA-2. But the

respondents have taken a stand that the earlier order and the judgements were not judgements *in rem*, that such benefits cannot be extended to non-members of the Association.

6. The applicants have also stated that by virtue of a resolution taken, the name of the Association stands changed as All India Association of Superintendents of Central Tax (AIASCT) and that it has been recognised by the respondents. Therefore, they contend that the members of the Association, who have since joined the same are also entitled to get the benefits.

7. The respondents have opposed the contention. According to them an Association as Applicant No.1 is not in existence; the matter was referred to the Department of Expenditure and the verdict in **Subramaniam** case cannot be extended to non-members of the Association.

8. The applicants filed a rejoinder. According to them the stand taken by the respondents tantamount to contempt of Court and therefore they prayed for initiating contempt of Court proceedings *suo-motu*. They have reiterated their contentions in the MA.

9. We have heard the learned counsel on both sides. Sri Shaik M. Abdulkhadir learned counsel submitted that the Association stands recognized by the respondents; it is a permanent entity and therefore, even if new members are enrolled, those who have joined on promotion as Superintendent of Central Excise are entitled to get the benefits of the verdict irrespective of the question whether, at the point of time when MA-2 order was rendered, they were members of the Association or not. According to the

counsel the respondents are not entitled to bifurcate members, who were members and who have become members subsequent in point of time. On the other hand, learned Standing Counsel Sri V.A. Shaji, opposed the application. According to him, the benefit of MA-2 has already been granted to the members of the Association and there is no judgement *in rem,* so that, the claim of the applicants cannot be accepted.

10. After hearing both the sides, we are of the view that the direction, as prayed for, cannot be denied. Firstly, we cannot forget the fact that Annexure A-1 order still holds the field. In Annexure A-3 judgement dated 08.12.2016, the Annexure A-2, to the extent it affects the applicant therein stands quashed. Basing on the decision in **Subramaniam** rendered by the Madras High Court, High Court of Kerala held that Annexure A-2 cannot hold good. **Subramaniam** judgement stands upheld by the Hon'ble Supreme Court in SLP. Different Benches of this Tribunal have also taken the view that Annexure A-2 cannot stand. In other words, the clarification given in Annexure A-1 to the effect that if an officer has completed 4 years on 01.01.2006 or earlier period on pre-revised scale of Rs.7500/-12,000/- is entitled to get non-functional upgradation with effect from 01.01.2006, or on such dates, as the case may be and thus entitled to get grade pay of Rs.5400/- Annexure A-3 judgement has already been implemented. Similarly, the order in MA-2 of this Tribunal dated 26.04.2018 also has been given effect to. Different Benches of the Tribunal including the Principal Bench have taken consistent stand on this aspect and all such orders have been implemented.

Therefore, there is no point in saying that the decision in **Subramaniam** is not a judgement *in rem*.

11. Secondly and more importantly, Annexure A-1 order is not person specific. It does not limit to individual beneficiaries. Paragraph 3 reads thus:-

> "3. The Department of Expenditure have now clarified that the 4-year period is to be counted w.e.f. the date on which an officer is placed in the pay scale of Rs.7,500-12,000 (pre-revised). Thus, if an officer has completed 4 years on 01.01.2006 or earlier, he will be given the non-functional upgradation w.e.f. 01.01.2006. If the Officer completes 4 years on a date after 01.01.2006, he will be given non-functional upgradation from such date on which he completes 4 years in the pay scale of Rs.7,500-12,000 (pre-revised)."

In other words, Annexure A-1 does not limit the benefits to any particular employee or group of employees. It states about those who have completed 4 years of service in the scale are entitled to get grade pay of Rs.5400/-. That means the respondents are not entitled to vivisect members of the Association and non-members.

12. Here the respondents have taken the stand that the 1st applicant in the OA i.e. All India Association of Central Excise Gazetted Executive Officers Kerala unit is no more in existence. But through MA-1 / MA-7 dated 22.04.2022 it has become clear that a new Association by name All India Association of Superintendents of Central Tax (AIASCT) has come into existence in the place of the old organization and that it has been recognised by the respondents. Such a transformation took place on the basis of the Annexure MA 6(5) resolution.

13. Whatever it may be, we are not concerned about the membership in the Association or non-members. The Courts have accepted in principle that those who have completed 4 years of service in that scale are entitled to get higher grade pay of Rs.5400/-. Such an order has become final and there is no material to show that Annexure A-1 has been revoked or cancelled by any subsequent decision.

14. As mentioned earlier, the Annexure A-1 is not person specific. It states about a group of employees. After cancelling Annexure A-2, Annexure A-1 remains undisturbed. It has not been revoked or cancelled. Therefore, irrespective of the question whether a particular employee is a member of the organisation or not, since the law has been laid down by Courts which stands approved by the Apex Court, respondents are not heard to say that such a verdict is to be confined to employees of the then organisation. That organisation might have become defunct but in its place another organisation has come in place and the respondents have recognised the new entity. Irrespective of that question, as we have held earlier, the law laid down by the Courts is applicable to the applicants.

15. It is the accepted principle of law that when the stamp of approval is given to a proposition by the Courts, the benefits should flow to the non-applicants as well, it is extendable to similarly placed employees. The policy of the State is not to multiply litigations and to drive non-applicants to the Courts or Tribunals with applications separately. Here the following observations of the Hon'ble Supreme Court in **State of Uttar Pradesh and**

others v. Arvind Kumar Srivastava and others {(2015) 1 SCC 347}is quite apposite:

> "22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently"

16. From the stands taken by the Courts it is very obvious that the intention was to extend the benefit to all similarly placed employees. In our considered view, all Superintendents of Central Excise, who have on completion of 4 years of service in the said scale of pay are entitled to get grade pay of Rs.5400/-. Therefore, the respondents are bound to extend the benefits to all similarly placed employees. With this direction the MA is disposed of. No costs.

(Dated this the 8th September, 2023)

sd/-

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

sd/-

(JUSTICE K. HARIPAL)
JUDICIAL MEMBER

va

List of Annexures

Annexure MA1: True copy of the order F.No.12017/02/2021-Ad IV A dated 22.04.2022 issued by the Central Board of Indirect Tax and Customs

Annexure MA2: True copy of the order dated 26.02.2019 of this Tribunal in OA No.180/862/2018

Annexure MA3: True copy of the Minutes issued as per GEXCOM II/(39)/33/2021 Estt. dated 06.01.2022 of the 4th Respondent

Annexure MA4: True copy of the order dated 06.01.2022 of the Principal Bench of this Hon'ble Tribunal in OA No.3768/2018

Annexure MA5: True copy of the letter F.No.12017/07/2017-Ad.IV-A dated 3.12.2020 issued by the Under Secretary, Department of Revenue

Annexure MA6: True copy of the letter No.55/CBIC.2022 dated 4.12.2020 of the Secretary General of the Association.

Annexure MA7: True copy of the Letter F.No E-12017/02/2021-Ad IV A dated 22.04.2022 issued by the Deputy Secretary, Department of Revenue

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Annexure MA R1: True copy of the communication issued by the 1st respondent to the 3rd respondent dated 10.01.2023.

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प्रमाणित सत्य प्रति
CERTIFIED TRUE COPY
दिनांक/Dated...12.9.23
अनुभाग अधिकारी (न्या.)
Section Officer (Judl.)

केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH