IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.08.2017
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
WRIT PETITION No.7706 of 2015
and
M.P.Nos.1,2 & 3 of 2015

N.Rajasekar ... Petitioner

Vs.

1. The Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

2. The Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai – 600 009. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the Charge Memo issued by the 1st Respondent in CD1/1151/2014 dated 14.03.2014 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader
(Taxes)
for R1 & R2

O R D E R

The charge memo issued by the 1st Respondent in Proceedings dated 14th March, 2014 is under challenge in this writ petition.

2. The Writ Petitioner was holding the Post of Commercial Tax Officer, Special Circle at Karur and now working as Assistant Commissioner. On account of certain allegations against the writ petitioner, the 1st respondent issued a charge memo and the charges framed against the writ petitioner are extracted hereunder:

Charge No.1:-

You, Thiru.N.Rajasekar, formerly CTO(FAC), Special Circle, Karur, now Assistant Commissioner (CT), Srirangam Assessment Circle, while working as CTO during the period from 16.05.2013 to 31.07.2013 have issued refunds to the tune of Rs.11 crores in the month of July 2013 to Tvl. Asian

Fabrics Pvt.Ltd., Karur. In most of the refund claims, refunds were issued in the absence of supporting documentary evidences. If the dealers have not filed necessary documents for the claim, appropriate orders have to be passed rejecting the claim of refund. But you have not done so. Thus, you are responsible for the huge revenue loss of Rs.11 crores to the State Exchequer.

Charge No.2:-

You, Thiru.N.Rajasekar, formerly CTO(FAC), Special Circle, Karur, now Assistant Commissioner (CT), Srirangam Assessment Circle, while working as CTO during the period from 16.05.2013 to 31.07.2013, in respect of the above said dealer have failed to verify the monthly returns and the Form 'W'/filed for the period from 1.9.2009 to 31.07.2013. The ITC carry forward amount was only Rs.1,24,18,664/-. But, in the monthly return it was shown as Rs.2,07,82,923/. The difference amount of ITC Rs.83,64,259/- wrongly claimed was refunded to the dealers.

Due to your negligence of duty heavy loss of revenue amounting to Rs.83,64,259/- was caused to the State Ex-Chequer.

Charge No.3:-

You, Thiru.N.Rajasekar, formerly CTO(FAC), Special Circle, Karur, now Assistant Commissioner (CT), Srirangam Assessment Circle, while working as CTO during the period from 16.05.2013 to 31.07.2013, failed to make input output ratio analysis and ensure the correctness of the related purchases to the export while giving refund as specified under rule 11(2) of TNVAT Rules, which was also highlighted in the circular No.22/2011 dt.20.11.2011 (VAT Cell Roc.No.37188/2011). No such analysis was made while issuing refund of Rs.2,17,67,791/-.

This shows your lack of interest and devotion to duty.

Charge No.4:-

You, Thiru.N.Rajasekar, formerly CTO(FAC), Special Circle, Karur, now Assistant Commissioner (CT), Srirangam Assessment Circle, while working as CTO during the period from 16.05.2013 to 31.07.2013 have failed to note that out of the four refunds issued in 3 refunds input output analysis were made. Whereas the exporters have shown inconsistent input and output ration in the refund of Rs.3,12,92,509/-. Further, the exporter while claiming refund furnished input relating to exports, claims, input ration at 40% in one case. Whereas, in respect of the same dealer in another claim, input rose upto 80% which is not correct. ITC variation of 5 to 10% is acceptable. But, this much of huge difference would show that the exporters have claimed input exorbitantly so as to claim false refund. This aspect was not verified by you while giving refunds.

Due to your aforesaid lapse, ineligible refunds was issued to the dealer, which caused huge loss of revenue due to the Government.

Charge No.5:-

You, Thiru.N.Rajasekar, formerly CTO(FAC), Special Circle, Karur, now Assistant Commissioner (CT), Srirangam Assessment Circle, while working as CTO during the period from 16.05.2013 to 31.07.2013 have failed to determine the visible/invisible wastages while issuing refunds.

This shows your lack of devotion to duty and lack of interest to safeguard the revenue due to the Government.

Charge No.6:-

You, Thiru.N.Rajasekar, formerly CTO(FAC), Special Circle, Karur, now Assistant Commissioner (CT), Srirangam Assessment Circle, while working as CTO during the period from 16.05.2013 to 31.07.2013 have failed to obtain the bank reconciliation certificate, even though circular instructions were already issued in circular No.22/11 dt 20.10.11 to verify bank reconciliation certificate. But you have failed to do so.

This shows your lack of sincerity in discharging your official duties.

Charge No.7:-

You, Thiru.N.Rajasekar, formerly CTO(FAC), Special Circle, Karur, now Assistant Commissioner (CT), Srirangam Assessment Circle, while working as CTO during the period from 16.05.2013 to 31.07.2013 have failed to properly function as an assessing officer and issued irregular and ineligible refunds and thereby caused huge loss of revenue to the state exchequer. Due to the above said lapses you have violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

Along with the impugned charge memo, statement of allegations and imputations of misconduct are enclosed in Annexure-II. Annexure-III contains the List of Documents relating to the charges.

3. Responding to the impugned charge memo, the writ

petitioner submitted his explanation on 04.04.2014, denying the charges. After submitting the explanation to the charge memo, the petitioner moved the writ petition, challenging the charge memo on the ground that the time limit prescribed in Government Letter has not been followed for framing the charges and conducting the enquiry and further, it is stated that the writ petitioner has acted in accordance with law, by applying his mind on the issues and he has not committed any irregularity while dealing with the files.

4. Further, the learned counsel appearing for the writ petitioner contended that the orders in question in the charge memo were passed by the writ petitioner in his capacity as a Quasi Judicial Authority under the Act and therefore, he cannot be held responsible for any lapses. Further, it is contended that while acting as a Quasi Judicial Authority, the writ petitioner has applied his mind on the subject and had taken a decision. Such a decision has been taken while exercising the powers under the Act and the lapses or irregularities, if any, cannot be a ground for framing the charges under Rule 17(b) of the Tamil Nadu Civil Services, Discipline and Appeal Rules.

5. The learned Additional Government Pleader (for Taxes) appearing on behalf of the respondents contended that such an exemption cannot be granted to the Public Servants and no such exemption is contemplated under the provisions of the Tamil Nadu Civil Services, (Discipline and Appeal) Rules. All the Government officials working in the Department are liable for disciplinary proceedings under the provisions of the Tamil Nadu Civil Services, (Discipline and Appeal) Rules. The exemption, as such, sought for by the writ petitioner stating that he had exercised his powers as a Quasi Judicial Authority cannot be considered. All the officials in the department are exercising the powers in one way or other under the Provisions of the Act and Rules. But, they must be prudent and diligent, while exercising such powers. Any lapses found in this regard are certainly punishable under the Discipline and Appeal Rules. Thus, the grounds raised in this writ petition deserves no consideration.

6. This Court is of the view that writ petition challenging the charge memo cannot be entertained in a routine manner. A writ against a charge memo can be issued only on exceptional circumstances, if a charge memo was issued by an authority, having no jurisdiction or competency or the charge memo was issued on mala fides or if the charge memo is in violation of the statutory rules. Even, in case of raising the ground of mala fides, the authority against whom such allegation is set out is to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of these grounds,

no writ proceedings can be entertained, questioning the charge memo on merits.

7. In the case on hand, the grounds raised by the writ petitioner are relating to merits of the case which cannot be adjudicated, at this stage, by this Court. It is left open to the writ petitioner to participate in the domestic enquiry proceedings and prove his innocence. However, the writ petitioner has already submitted his written explanation to the charge memo. Further, the writ petitioner has submitted his statement of defence on 04.04.2014. Instead of proving his innocence before the enquiry officer, the writ petitioner moved this writ petition under Article 226 of the Constitution of India.

8. The Disciplinary Proceedings initiated against public officials is to be allowed to continue and a logical conclusion to be reached inthis regard. Intermittent intervention in disciplinary proceedings is to be undertaken cautiously. The power of Judicial review in this regard is to be exercised only in exceptional circumstances and not in a routine manner. On a perusal of the entire Affidavit, this Court is of the firm opinion that the grounds raised by the writ petitioner are relating to the merits of the case which cannot be adjudicated by this Court in this writ proceedings at this stage. The grounds relating to time limit and initiation of disciplinary proceedings and continuance of the same as per the Government Letter dated 22.12.1987 has no relevance at all. The Government Letter dated 22.12.1987 is an instruction and cannot be construed as a rule. Instructions/Guidelines are given to the authorities to follow the same. Considering the various circumstances, such instructions are issued as directory and the same cannot be construed as mandatory. Instructions will not provide any legal right to the writ petitioner nor such an instruction will constitute a base for quashing the charge memo. Once the disciplinary proceedings are initiated, the same is to be allowed to be concluded as early as possible and this Court is of the firm opinion that such instructions/guidelines issued by the Government will not confer any legal right on the writ petitioner to question the very charge memo. The grounds regarding the merits and the supportive claims made in the writ petition have to be adjudicated only by the enquiry officer so appointed by the department and not by this Court in this writ proceedings.

9. In this view of the matter, no further adjudication or

consideration needs to be given on the merits of this writ petition. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk,
Chennai - 600 005.

2. The Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai - 600 009.

+1 cc M/s.Adithyareddy Advocate sr 59201

W.P.No.7706 of 2015

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