IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.33507 of 2013

The Union of India rep. by the
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
New Delhi - 110 001. .. Petitioner

Vs

1.M.Krishnaswamy

2.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 104. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records of the second respondent pertaining to the impugned order in O.A.No.1521 of 2010 dated 18.10.2012 and quash the same.

For Petitioner .. Mr.V.Sundareswaran

For Respondents .. Mr.V.Vijay Shankar for R1
R2 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This writ petition has been filed against the order of the Tribunal, which, in turn allowed the Original Application filed by the first respondent on the ground of inordinate delay in issuing the charge memo, which is 15 days prior to the date of superannuation.

2.The charge memo was issued to the first respondent on the premise that he has not asked for a copy of bill of entry for de-bonding of M/s.Orbit Fabrics Limited. This failure caused wrong assessment done by the subordinate officers to go unnoticed and caused loss. It is also to be seen that as against the assessee, a revised assessment order was passed and against which, proceedings are pending.

3.Learned counsel appearing for the petitioner submits that the delay per se cannot be a ground to quash charge memo. It has to be seen on the facts and circumstances of each case. As a superior officer, the first respondent ought to have been careful enough by asking a copy of the bill of entry. Therefore, the order of the Tribunal requires interference.

4.Learned counsel appearing for the first respondent would submit that though the Tribunal has not gone into the merits of the case, the charge memo would show that the assessment was done wrongly by the subordinate officers by name Mr.K.K.Bhootra, Superintendent and Mr.J.R.Gujjar, Inspector and the loss is yet to be determined since the matter is pending at large, pursuant to the revised assessment made against the assessee. In any case, the first respondent is not responsible for the delay caused.

5.The delay in issuing charge memo per se cannot be the sole ground to set aside the same. After all, the question of delay is one of practice and prudence to be appreciated on the facts and circumstances of each case. However, in the case on hand, seven years delay cannot be attributed against the first respondent. Merely because the petitioner has proceeded against the assessee, it cannot be said that the charge memo ought not to have been issued earlier. Proceeding against an assessee is different, as against the framing of charges against the delinquent officer. Admittedly, the petitioner knew about the wrong assessment made. To be noted, the entire proceedings has come to light only through the objection raised by the audit. Therefore, we are of the view that there is nothing wrong in the order of the Tribunal.

6.Though the Tribunal has not gone into the merits, we have perused the charge memo issued against the first respondent. We do so since the first respondent has already attained the age of superannuation. The charge is not very serious in nature. It is to the effect that the first respondent has been negligent in performing duty by allowing the subordinates to pass wrong assessment order. Therefore, even on that ground, we are not inclined to interfere with the order at this stage.

7.In such view of the matter, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 104.

+1 cc to Mr.V.Vijay Shankar, Advocate Sr.No.83925
+1 cc to Mr.V.Sundareswaran, Advocate Sr.No.83381

W.P.No.33507 of 2013

SPD(CO)
CSL/07.01.2019