IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11-07-2018

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.8948 to 8951 of 2011

S.Varadharajan	..	Petitioner in WP 8948 of 2011
P.Mani	..	Petitioner in WP 8949 of 2011
S.Rajan	..	Petitioner in WP 8950 of 2011
R.Sivakumaran	..	Petitioner in WP 8951 of 2011

versus

1. The Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai-09.

2. The Commissioner of Commercial Taxes,
Chepauk, Chennai-5. .. Respondents in all Writ Petitions

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarifiled Mandamus, To call for the records in pursuant to the impugned order of punishment issued by the 2nd respondent in proceeding No.EE1/99224/94 dt.18.9.1997 and the Appellate Order passed by the 1st respondent in G.O.(2D) Nos.31, 27, 26 and 28 Commercial Taxes and Registration (A1) Department dated 1.3.2007 and quash these orders and consequently direct the respondents to grant all increments arrears and other monetary benefits.

For Petitioners : Ms.Swathi Subramanian

For Respondents : Mr.M.Hariharan, AGP

COMMON ORDER

The petitioners have approached this Court, seeking the following relief:

> "To issue of Writ of Certiorarifiled Mandamus, to call for the records in pursuant to the impugned order of punishment issued by the 2nd respondent in proceeding No.EE1/99224/94 dated 18.9.1997 and the Appellate Order passed by the 1st respondent in G.O.(2D) Nos.31, 27, 26 and 28 Commercial Taxes and Registration (A1) Department dated 1.3.2007 and quash these orders and consequently direct the respondents to grant all increments arrears and other monetary benefits."

2. While the petitioners were working as Assistant Commercial Taxes Officer, Bannari Check post, they were issued respective charge memos dated 7.2.1995, alleging that they failed to stop 49 vehicles which moved from Tamil Nadu to Karnataka State through Bannari Check Post and Punjanur Check Post at Tamil Nadu - Karnataka Border and failed to collect the documents from the vehicles. It appears that an enquiry was conducted, which culminated into the imposition of punishment of stoppage of increment for two years with cumulative effect. Aggrieved by the same, the individual petitioners preferred appeals to the first respondent, which came to be rejected vide impugned Government Orders dated 1.3.2007. Thereafter, the petitioners also moved respective Review Petitions, however, no orders were passed. Hence, the petitioners have come forward with the present Writ Petitions.

3. The sum and substance of the charges levelled against the petitioners is that the petitioners, while working as Assistant Commercial Tax Officers at Bannari Check Post, had failed to stop 49 vehicles which moved from Tamil Nadu to Karnataka State and passed through Bannari Check post and Punjanur Check post at Tamil Nadu-Karnataka Border and also failed to collect the documents from the drivers of the vehicles which carried taxable commodities worth of Rs.98,42,064, Rs.22,99,097, Rs.4,46,602 (incoming) and Rs.20,79,119, Rs.24,74,520 and Rs.1,38,35,673 (outgoing) respectively, and the same was not recorded in the Movement Register and thereby indirectly helped the dealers in various parts of the State, more particularly, in Coimbatore, Erode, Trichy and Salem to evade tax to a large extent.

4. The learned counsel for the petitioners would submit

that as per the findings of the Enquiry Officer, there is no clinching evidence to show that all the vehicles had passed only through the Bannari Check Post since admittedly, there were diversion routes available and there was every possibility for the vehicles to cross Bannari Check post through different routes. However, without taking into consideration of this fact, unfortunately, the Enquiry Officer held the charges proved against the petitioners. Therefore, the learned counsel would submit that the punishment imposed based on the findings of the Enquiry Officer, cannot be sustained in law and hence, liable to be set aside.

5. Upon notice, Mr.M.Hariharan, learned Addl.Government Pleader entered appearance for the respondents and filed a detailed common counter affidavit, wherein, inter alia, it is stated that the Checkposts are established to prevent and check evasion of tax under Section 42 of the TNGST Act and all goods vehicles whether loaded or empty should be stopped at the checkpost, verified and entries made in the movement register and the Checkpost Officer should not allow the goods vehicle to move further without stopping at the Checkpost and getting entries recorded in the Movement Register. However, the petitioners during their tenure from 1993-94 and 1994-95 failed to discharge their duties properly and allowed the vehicles to pass through Bannari Checkpost without recording the entries in the Movement Register of the Checkpost, which resulted in the non-collection of documents such as bills, delivery notes, etc., pertaining to the goods movement and such non-availability of documents, the Department was unable to levy tax and thereby, the petitioners caused revenue loss to the Government. Therefore, disciplinary action was initiated against the petitioners and after conducting due enquiry, wherein, the charges against the petitioners held proved, the Disciplinary Authority had imposed punishment of stoppage of increment for two years against them. Therefore, the learned Addl.Government Pleader would contend that there is no infirmity in the impugned orders and hence, the writ petitions are liable to be dismissed.

6. Heard the learned counsel for the petitioners and the learned Addl.Government Pleader for the respondents and perused the entire materials and pleadings placed on record.

7. The learned counsel for the petitioners would submit that the issue involved in the present Writ Petitions, is no longer res integra since this Court has already dealt with very similar issue in W.P.No.32847 of 2005. The relevant portion as found in paragraphs 3 to 9, is extracted as under:

> "4. The learned Counsel for the petitioner has submitted that as far as the above 3 charges are concerned charges 2 and 3 are

consequential of charge of 1. The gist of the charge is that the entries of certain vehicles have been made in the register of Punjanur Check-post and the entries with regard to those vehicles had not been made in the register of Bannari Check-post. Consequently, there was evasion of tax to the tune of Rs. 25,34,029/- and basing on these allegations, violation of Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules '73 was levelled against the petitioner.

5. The learned Counsel for the petitioner further submitted for this allegation the petitioner and some other officers have been placed under suspension in the year 1984 and the same was challenged in O.A.Nos. 5210 to 5217 of 1994 on the file of the Tamil Nadu Administrative Tribunal and the O.As. were disposed of by an order dated 25.11.94 with a specific direction which is as follows:

> The location of the check-post prima facie cannot appears to be the most suitable. The proper location should be near the State Borders beyond any junction of any minor roads with the Highway on which the Check-post is located. The location would appear to have been decided with reference to the convenience of the staff rather than the needs of the department and such location has given room for possibly genuine evasion as well as an excuse which cannot be dismissed straight away, that vehicles have taken diversion without passing the Check-post. The department should review the location in the light of the circumstances in this case.

6. Basing on the above said direction, a report was called for with regard to the availability of diversion route between Punjanur Check-post and Bannari Check-post. After going through the entire matter, The Special Commissioner (CT)(ENF) has submitted his report on 14.3.95. As per the said report also the Bannari Check-post have been functioning with effect from 5.5.64 and the said check-post is located at the foot hills of the western ghats. That apart as per the said

report the vehicle coming from Samrajnagar, Karnataka State has to pass through the Pulingoor Check-post of Karnataka State, then Hasanoor and Thimmam in Tamil Nadu before reaching Bannari Check-post. As per the said report though the Check-post at Hasanoor, Germalam and Thalavadi were formed with effect from 21.2.70. These Check-posts were disbanded with effect from 20.2.82. The vehicles which has passed through the Punjanur Check-post need not pass through Bannari Check-post since, they had diversion route. Because of this availability of these additional diversion route alone the vehicle which had been passed through the Punjanur Check-post had not been passed through the Bannari Check-post. Consequentially, there was a tax evasion by them.

7. Basing on the report, the learned Counsel for the petitioner has contended that the allegation levelled in the charge-memo is not sustainable. since, because of the availability of the diversion route, the petitioner cannot be held liable for the evasion of tax payment by the certain vehicles which had passed through Punjanur Check-post but not Bannari Check-post.

8. That apart the learned Counsel for the petitioner has submitted that the enquiry officer conducted an enquiry, he has simply admitted that there are three diversion routes and also he specifically mentioned there is no clinching evidence that all the vehicles have definitely passed through the Bannari Check-post. After giving this finding the enquiry officer without assigning any reason has held that the charges levelled against the petitioner are proved. That apart according to the enquiry officer report, the roaming squad should have been found out the tax evasion by the movement of the vehicle through the diversion route. As far as roaming squad is concerned the petitioner who is Assistant Commercial Tax Officer, Bannari Check-post is not responsible for any lapses on the part of the roaming squad. Even from that angle, responsibility cannot be fixed on the petitioner for the alleged lapses.

9. As per the allegation levelled, the petitioner who was working as Assistant Commercial Tax Officer at Bannari Check-post has failed to stop 60 vehicles which moved from Tamil Nadu to Karnataka State and passed through the Bannari check-post and Punjanur check-post at Tamil Nadu-Karnataka Border and similarly 9 vehicles which came from other States and passed through the Punjanur check-post in Karnataka State and Bannari check-post and make entries in the movement register of the Bannari check-post. Eventhough the details of these vehicles and value of the goods were recorded in the movement register of the Punjanur check-post and the details of the vehicles which were recorded in the register of the Punjanur check-post not entered into the movement register of the Bannari check-post is the gist of the allegation levelled against the petitioner under charge No. 1. Even as per the findings of the enquiry officer also, there is no clinching evidence to show that all vehicles have definitely passed through the Bannari Check-post. As such, as rightly contended by the learned Counsel for the petitioner that when diversion routes were available, the question of all vehicles passing through the Bannari Check-post which have crossed through Punjanur Check-post does not arise at all. That apart, when there is a specific submission that because of the disbanding of the three Check-posts between Punjanur and Bannari check-posts, diversion routes were available, consequentially, there is every possibility for the vehicles not to cross Bannari Check-post. Though the enquiry officer has given a finding that charges 2 and 3 are proved, there is no discussion about how the charges are held proved. Without giving any reason, the enquiry officer has given a finding that the charges have been held proved and that apart, even as per the counter filed by the Department as well as the report submitted, diversion routes are available. As such, there is every possibility for the vehicles which are passing through the Punjanur check-post to avoid the Bannari check-post. Hence, the allegation that all the entries made in the movement register of Punjanur check-post not made in the movement register of Bannari check-post does not arise

and for the consequential tax evasion of the vehicles which did not pass through the Bannari check-post, the petitioner cannot be held liable. Hence, the punishment imposed basing on the allegation cannot be allowed to stand, as such, the impugned order is quashed and the writ petition is allowed. No costs. Basing on the impugned order, the learned Counsel for the petitioner submits that the petitioner was deprived of promotion and also other benefits. Since, in view of the order passed in the above writ petition, the petitioner is entitled to have all other benefits which he has been deprived of basing on the impugned order alone."

8. The facts involved in the above Writ Petition are almost identical to the facts of the present Writ Petitions. In this case also, the Enquiry Officer, in his findings in respect of Charge No.1, has clearly stated as under:

"1. The charge No.1 is held proved as movements of goods entered in Punjanur checkpost had not been entered in Bannari checkpost. However, it should also be stated that there is no clinching evidence that all the vehicles have definitely passed through the Bannari Checkpost." (emphasis added)

9. Therefore, when admittedly, there was no clinching evidence that all the vehicles have definitely passed through the Bannari Chek post, there is every likelihood for the vehicles to reach the destination without passing through the Bannari Check post by choosing diversion routes. In such circumstances, as rightly contended by the learned counsel for the petitioners that there was no occasion for the petitioners to stop and check the vehicles and therefore, the petitioners cannot be held liable and as such, the impugned orders, imposing the punishment on the petitioners are liable to be set aside. This view has also been fortified by the learned Judge of this Court in the order extracted above, while dealing with the similar Writ Petition.

10. In view of the above discussion, the Writ Petitions stand allowed. the impugned orders of punishment passed by the 2nd respondent in proceeding No.EE1/99224/94 dated18.9.1997 and the Appellate Order passed by the 1st respondent vide G.O.(2D) Nos.31, 27, 26 and 28 Commercial Taxes and Registration (A1) Department dated 1.3.2007 are hereby set aside. Consequently, the respondents are directed to grant all attendant and monetary benefits that would flow consequent to the setting aside the

impugned orders, within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

suk

1. The Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai-09.

2. The Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

+4cc to Mr.R.Premnarayan Advocate SR.No.45556,45557,45558,45559

+1cc to Government Pleader SR.No.45844

W.P.Nos.8948 to 8951 of 2011

GMY(20/09/2018)