IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1531 of 2017
&
C.M.P. No. 20196 of 2017

N. Rajasekar ..Appellant

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: Writ Appeal as against the order dated 17 August, 2017 in W.P. No. 7706 of 2015.

WP.Prayer: Writ Petition prayed to writ of ceritiorari Calling for the records of the chargememo issued by the 1st respondent in CDI/1151/2014 dated 04.03.2014 and quash the same.

For Appellant :: Mr.Yashodvardhan,
Senior Counsel for
Mr.Adhithya Reddy

For Respondents:: Mr.Hariharan,
Addl. Govt. Pleader (T)

J U D G M E N T

(Judgment of the Court was delivered by K.K. SASIDHARAN,J.)

The appellant while working as Commercial Tax Officer, Special Circle, Karur passed orders directing refund to the tune of Rs. 11 crores to M/s. Asian Fabrics Private Limited, Karur without supporting documentary evidence. Similarly, he passed string of other refund orders resulting in initiation of disciplinary proceedings by the Commissioner of Commercial Taxes, Chennai. The writ petition filed by the appellant in W.P. No. 7706 of 2015 challenging the disciplinary proceedings was dismissed by the learned Single Judge by order dated 17 August, 2017. Feeling aggrieved, the appellant has come up with this intra-court appeal.

2. The learned Senior Counsel for the appellant contended that the appellant exercised quasi judicial function by passing orders in the refund applications. The orders directing refund were all approved by two higher authorities as per the procedure and as such, it cannot be said that the power was exercised by the appellant in a mala fide manner. The learned Senior Counsel contended that subsequently, the matter was enquired into by the Commercial Tax Department and it was found that there was nothing wrong in passing orders for refund. The learned Senior Counsel further submitted that the Assistant Commissioner, who approved the refund was permitted to retire and this would amount to selective discrimination against the appellant. The learned Senior Counsel contended that there are no materials to proceed departmentally against the appellant and as such, the learned Single Judge was not correct in dismissing the writ petition.

3. The learned Additional Government Pleader (Tax) appearing on behalf of the respondents contended that the orders for refund were passed by the appellant without verifying the required documents. The learned Additional Government Pleader fairly conceded that the Assistant Commissioner, who approved the refund was permitted to retire without facing disciplinary proceedings. According to the learned Additional Government Pleader, another officer, who was instrumental in approving the refund is also facing departmental proceedings.

4. The Commercial Taxes Department initiated disciplinary proceedings against the appellant on allegation that he issued several refund orders without taking any effort to verify the supporting documentary evidence. The Commercial Taxes Department alleged that on account of the omission and commission, the appellant caused substantial loss to the State Exchequer. The charge memo dated 14 March, 2014 contains the details of the charges. The refund orders were primarily in respect of an assessee by name M/s. Asian Fabrics Private Limited based at Karur. There is no dispute that the refund orders were all approved by two superior officers. Therefore, it is prima facie clear that it was a responsibility undertaken jointly and severally by three officers. Even according to the respondents, the orders passed by the appellant for refund of the amount was approved by the Deputy Commissioner and the Joint

Commissioner.

5. The appellant has come up with a contention that the Deputy Commissioner approved the refund and no action was taken against him. The said officer was also permitted to retire on attaining the age of superannuation. The appellant has also taken up a contention that the accounts were audited by the Accountant General Audit and Internal Audit and a report was submitted that there was no loss of revenue as alleged in the Special Inspection Report based on which departmental action was taken against the appellant.

6. The appellant has submitted his explanation to the charge memo. It was only at that point of time he filed the writ petition to quash the charge memo.

7. After hearing the learned Senior Counsel for the appellant and the learned Additional Government Pleader (Taxes) for the respondents, we are of the view that interest of justice would be subserved by directing the Disciplinary Authority to consider the explanation submitted by the appellant and pass appropriate orders to decide as to whether further proceedings should be taken pursuant to the charge memo dated 14 March, 2014.

8. We permit the appellant to file an additional explanation to the charge memo dated 14 March, 2014 indicating all the subsequent events. It is also open to the appellant to produce materials in support of his contention taken in the affidavit filed in support of the writ petition, memorandum of appeal and the affidavit dated 17 March, 2019 filed before this Court.

9. The first respondent shall consider the explanation and the materials produced by the appellant and a decision should be taken as to whether further proceedings should be taken pursuant to the charge memo dated 14 March, 2014. Such exercise shall be completed on or before 31 July, 2019.

10. The intra-court appeal is disposed of with the above direction. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nv

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.

+1cc to Mr.Aditya Reddy, Advocate, S.R.No. 35988
+1cc to the Government Pleader, S.R.No. 36490

W.A. No. 1531 of 2017

MG(CO)
GN(04/06/2019)