



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.11.2020

Delivered on : 18.12.2020

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WEB COPY

W.P(MD) .No.10355 of 2020

and

W.M.P. (MD) .No.9234 of 2020

K.R.Subramanian

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
4th Floor, CMDA Towers,
Gandhi Irwin Bridge Road,
Egmore, Chennai.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
Collector Office, Old Building First Floor,
Trichy 620 001.

3.The District Manager,
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
SIPCOT Industrial Complex,
Pudukottai,
Pudukottai District 622 002.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certioraified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.A1/0510/2020, dated 28.07.2020 on the file of the third respondent and quash the same as illegal and consequently for a direction, directing the third respondent to conduct *de novo* enquiry in accordance with the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited 2014 (The "Code").

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.H.Arumugam

Standing counsel for TASMAC



O R D E R

This writ petition has been filed against the order passed by the third respondent in Na.Ka.No.A1/0510/2020, dated 28.07.2020, whereby the third respondent has imposed penalty, interest and GST, for the remittance of the shortage amount as the same was found at the time of counting the stocks, subsequent to the transfer of the same from Shop to godown for the purpose of safe custody.

2. The petitioner is working as a Supervisor at TASMAL Shop No.6547, Keeranur, Pudukottai District. On 24.03.2020, the Government of India announced the lock down throughout the country with effect from 6.00 p.m., due to Novel Coronavirus spread, thus, the petitioner has received instructions from the Managing Director/District Manager that he has to close the Shop at 6.00 p.m. In the normal course, the Shop is closed as per the closing time, in which case, the petitioner used to work for more than two hours from the closing time, to take the details of the stocks available and sale during the day and to close the day accounts and the sale amount shall be remitted on the next working day before 4.00 p.m.

3. In the present case, as the petitioner was compelled to shut down the Shop by 6.00 p.m., the petitioner was decided to close the day account by 4.00 p.m., on 24.03.2020 so as to enable the petitioner to count the total sales amount and to intimate the same to the concerned District Managers through SMS, which is the usual practice that would be followed in the normal course. As there was a huge rush in the shop to buy the liquors by the public, due to the reason of announcement of sudden lock down, the Supervisor along with the Salesman had concentrated on the sale of the liquors, the petitioner was not able to close the day account for the sales made between 4.00 p.m. and 6.00 p.m., on 24.03.2020, due to the reason that the petitioner was compelled to shut down the Shop by 6.00 p.m., and therefore, the petitioner kept the entire sale proceeds made between 4.00 p.m. and 6.00 p.m. in the locker available in the shop. Though, the amount of sale made between 4.00 p.m. to 6.00 p.m. was not informed to the District Manager but the petitioner informed by way of SMS about the total sales made up to 4.00 p.m. and the same was deposited on 26.04.2020.

4. The respondents came across the instances of theft of liquor bottles from the TASMAL shops. Therefore, they have decided to shift the entire stocks from the respective shops to some other safe place, such as Kalyanamandapam or other godowns and the same was happened on different dates. When the respondents opened the shops for the purpose of shifting the stocks and stock



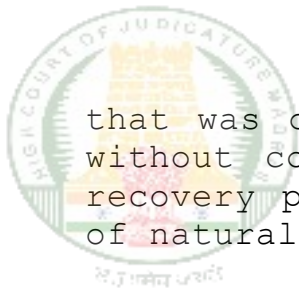
verification, the petitioner had an opportunity to enter into the shop and to verify the collections that have been made, out of the sales occurred in between 4.00 p.m. and 6.00 p.m. on 24.03.2020, which was kept in the locker, inside the shop and to finalise the day accounts for the sales occurred in between 4.00 p.m. to 6.00 p.m. on the date of lock down. Subsequent to the counting of day account, immediately the petitioner has contacted the respective District Managers and since they have not responded and granted permission to deposit the amount in the bank, there was a delay of one or two days before the deposit made in the bank account. It was not intentional, but due to the fact that there was a confusion among the District Managers, the sales amount was not deposited immediately after the shop was closed, but they have deposited subsequent to the shop opened for the stock transfer. Therefore, there was a delay on the part of the petitioner to deposit the sale amount and the same cannot be considered as a shortage amount and it is only after sale amount.

5. On 24.06.2020, the District Manager has issued a show cause notice calling upon the petitioner to show cause as to why the penalty of Rs.1,41,435/- along with interest and GST should not be collected from him for the shortage amount of stock, as per the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014.

6. The petitioner has sent a detailed reply to the third respondent stating that the amount paid by the petitioner was not a shortage amount as stated by the respondents Corporation, but it was the amount of sale occurred between 4.00 p.m. and 6.00 p.m. on 24.03.2020, as the same was not able to remit immediately due to the reason that the petitioner was compelled to shut down the Shop at 6.00 p.m., on 24.03.2020 and hence, the said amount was kept at the Shop in a safe custody.

7. On 28.07.2020, the third respondent has passed the impugned order, arbitrarily, without providing any opportunity to the petitioner to establish his case, imposing penalty as per Clause 7 (b) (xiv) of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014 (hereinafter called as Code, 2014).

8. The learned counsel appearing for the petitioner would submit that the third respondent has passed the impugned order, dated 28.07.2020, for recovery of penalty along with interest and GST, without conducting a domestic enquiry. The District Manager has misconstrued the after sale amount remitted by the petitioner as the shortage amount. Though the petitioner has elaborately given a reply that the said amount was not a shortage amount as construed by the respondents, but it was the after sale amount



that was occurred on 24.03.2020 between 4.00 p.m. and 6.00 p.m., without considering the same, the third respondent initiated a recovery proceedings, arbitrarily, in violation of the principles of natural justice.

9. Further, the District Manager has imposed the GST at the rate of 18% on the penalty, by referring to Sections 7(1) and 7(1-A) of the GST Act, 2017. Though the petitioner has initially referred Section 7(1) of the said Act, in the counter affidavit filed by the respondents it has been stated clearly that the GST was imposed under Section 7(1)(d) of the said Act. As the relevant provision was omitted by virtue of the amendment dated 30.08.2018, the respondents do not have any power to collect GST by invoking a provision which was not in force and the same would per se, amounts illegal.

10. Even if any such Section was in force, the petitioner's contention was that the said Section will not be applicable to the case on hand, as in the present case, it was only a penalty imposed by the respondent in a disciplinary proceedings, in which case, the imposition of GST on the petition does not arise, as the same will apply in case if any penalty imposed in the course of trade or commerce.

11. The learned counsel appearing for the petitioner, Mr. T. Lajapathi Roy, submitted that the present impugned order was passed without providing opportunity to the petitioner by conducting the domestic enquiry as per the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014 (hereinafter called as Code, 2014). He further submitted that the third respondent misconstrued and passed the impugned order as if there was a shortage of sale and imposed 50% penalty on the shortage of sale along with interest and G.S.T., whereas that there was no shortage amount but it was only a after sale amount which fact was not considered by the respondent while passing the impugned order.

12. The main contention of the learned counsel for the petitioner is that already the petitioner deposited the entire after sale amount along with GST and interest. Now, under the pretext of disciplinary action, without giving any opportunity and without conducting the domestic enquiry, construing the deposit of the after sale amount as shortage amount and imposed the penalty of 50% which is against the procedures set out in the Code and violation of the principles of natural justice. Therefore, the impugned order is liable to be set aside on this ground.

13. Secondly, the learned counsel for the petitioner made a strong objection that the respondent is not entitled to impose GST



on the penalty amount under the disciplinary proceedings in terms of Section 7(b)(xiv) of the Code in the absence of any provision in the said Section about the collection of the GST. Hence he submitted that the collection of GST was illegal.

14. Further, one of the counsels viz., Mr.Suresh Kumar, who is appearing in the batch of writ petitions also submitted that in a disciplinary action, no GST can be collected in respect of the penalty imposed under the Code, as the respondent is not entitled to collect the same, without any specific provision in the Code.

15. Mr.R.V.Rajkumar, learned counsel appearing for the petitioners in W.P.(MD).Nos.13770, 13773, 13776 and 13779 of 2020 submitted that in the present case, a show cause notice was issued for collecting the GST in terms of Section 7(1) (d). Most of the impugned orders were passed on 14.09.2020 and some of the orders were passed in the month of August 2020, whereas Section 7 (1) (d) was omitted with effect from 01.07.2018, by Section 3 of the CGST Amendment Act, 2018 and further, the learned counsel for the petitioners submitted that the same came into force with effect from 01.02.2019. He has also referred the counter filed by the respondents, wherein he has admitted the fact that the GST was collected in terms of Section 7(1) (d). In the present case, the impugned order was passed in the month of September 2020. Therefore, on the date of issuance of the impugned order, Section 7(1) (d) was not in force. Therefore, imposing the G.ST by referring Section 7(1) (d) of the GST Act, 2017 is illegal. The GST can be imposed only in the course of trade or commerce and particularly when the sale or services takes place. Hence the impugned order is liable to be quashed.

16. The learned counsel referred Article 246(A) of the Constitution of India and submitted that only in the course of trade or commerce, the State Government can impose the GST. Therefore, he submitted that the impugned order is liable to be dismissed.

17. Mr.R.V.Rajkumar, learned counsel appearing for the petitioners in some of the writ petitions would also submit that the amount deposited by the petitioner is not a shortage amount, but it was an after sales amount. Though the petitioner has submitted that the delay in remitting the after sale amount, even after the date of stock transfer, was due to the reason that the respective District Managers have not given permission to remit the same in the bank account. However, the respondents submitted as if that the petitioner only delayed in depositing the amount, in which case, to find out the correct fact, a domestic enquiry is required, which they have not done in the present case. Therefore, the impugned order, per se, is illegal and liable to be quashed.



18. The learned counsel appearing for the petitioner in support of his submissions, relied on the following judgments:

(i) reported in **AIR 1972 SC 32 (Channabasappa Basappa Happali vs. The State of Mysore)**

(ii) reported in **1987 (1) SCC 424 (Reserve Bank of India v. Peerless General Finance and Investment Company)**

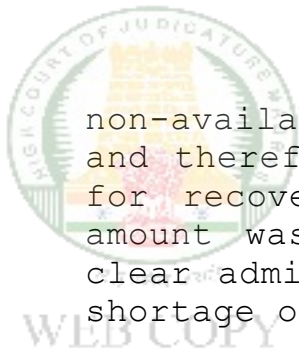
(iii) reported in **2011 (5) SCC 729 (Afjal Imam v. State Bank of Bihar)**

(iv) reported in **AIR 2008 SC 1831 (UCO Bank vs. Rajinder Lal Capoor)**

(v) reported in **2010 (1) SCC (L&S) 1012 (H.S.Vankani vs. State of Gujarat)** and

(vi) reported in **2007(4) L.W. 125 (Rasali vs. Talco Bank)**

19. Per contra, Mr.H.Arumugam, learned Standing counsel appearing for the respondents would submit that as per the Rules and Regulations, whatever the sales occurred in the previous day, the Supervisor is required to deposit the sale amount in the next working day before 4.00 p.m. In the present case, admittedly, the petitioner has deposited the sale amount in the next working day, after the lock down, only for the sales made up to 4.00 p.m. and he has not remitted any amount with regard to the sales made between 4.00 p.m. and 6.00 p.m. The petitioner has to inform the same to the respondents as per the Rule framed with regard to the sales made on the particular day. However, in the present case, though the petitioner has informed the sales made up to 4.00 p.m., by way of SMS, he has not informed anything about the sales made between 4.00 p.m. and 6.00 p.m. Even assuming that if any sales have been made, it is the duty of the petitioner to inform the same to the respondents by way of SMS and even assuming that if he was not able to count due to the lock down from 6.00 p.m. on 24.03.2020, at least he would have informed that he has sold the stock between 4.00 p.m. and 6.00 p.m. and no counting was made with regard to the sales amount between 4.00 p.m. and 6.00 p.m. and the sale amount was kept in the safety locker. Such a minimum requirement of message was not sent. In fact, the shortage amount came to know by the respondents only when they have made a stock verification at the godown, subsequent to the shifting of the stocks from the Shop to godown and nothing prevent the petitioner to inform the respondents with regard to the availability of cash in the Shop. However, even on the date of stock verification, the petitioner never ever informed the availability of cash at the TASMACH Shop. But, all of a sudden, the petitioner has remitted the said amount after few days of stock verification. Therefore, it is only a shortage amount and not a sale amount, because the after sale figure was 5 to 6 times more than the normal one day sale. In such circumstances, the respondents can construe the value of the



non-availability of the stocks only as a shortage of the stocks and therefore, the third respondent has passed the impugned order for recovery of penalty along with interest and GST. The said amount was also paid by the petitioner and therefore, it is a clear admission on the part of the petitioner with regard to the shortage of the stocks.

20.The third respondent has issued the show cause notice, dated 24.06.2020, calling for the explanation from the petitioner as to why the penalty amount of Rs.1,41,435/- along with interest and GST should not be collected from him for the shortage amount of stock. The petitioner has replied that it was not a shortage, but it was only after sales amount. However, the respondents have refused to accept the statements of the petitioner. Since there is a clear cut admission on the part of the petitioner, the third respondent has imposed the penalty of Rs1,41,435/-along with interest and GST at the rate of 18%. Before imposing the penalty, sufficient opportunity has to be given to the petitioner to explain his case and the third respondent has also given sufficient opportunity to the petitioner to explain his case and the admitted fact need not be proved once again and it is the settled principles of law. Accordingly, the third respondent has imposed the penalty on the petitioner.

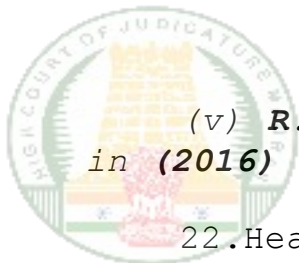
21.With regard to the GST, the learned Standing counsel appearing for the respondents has admitted the fact that Section 7 (1) (d) of the GST Act has been omitted and the said omitted portion has been inserted in the form of Section 7(1A) of the Act. Therefore, though the third respondent has inadvertently issued the show cause notice by referring to Section 7 (1), it would be construed as a show cause notice issued under Section (1A) for the collection of GST. He would further submit that the petitioner is liable to pay GST, because he has not acted upon as per the advise of the respondents. Therefore, the third respondent has imposed the penalty. Further, the learned Standing counsel appearing for the respondents referred to the judgments with regard to the point for admission made on the part of the petitioner and the same need not be proved once again by way of domestic enquiry and on the aspect of imposition of GST on the penalty. In support of his contention, he has referred the following judgments.

(i) ***Bajaj Finance Limited vs. Jurisdictional Officer State Tax Officer, Pune*** reported in ***(2019 SCC Online Mah AAAR -GST 27)***

(ii) in the matter of ***Dholera Industrial City Development Project Limited*** reported in ***(2019 SCC Online Guj AAR-GST 11)***

(iii) In the matter of ***TP Ajmer Distribution Limited*** reported in ***2018 SCC Online Raj AAAR - GST 2***

(iv) ***Himachal Pradesh Road Transport Corporation and another vs. Hukam Chand*** reported in ***(2009) 11 SCC 222*** and



(v) ***R.R.Parekh vs. High Court of Gujarat and another*** reported in (2016) 14 SCC 1

22. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioners in W.P.(MD).Nos.10355, 10361 and 10362 of 2020, Mr.R.V.Rajkumar, learned counsel appearing for the petitioners in W.P.(MD).Nos.13770, 13773, 13776 and 13779 of 2020 and Mr.R.Suresh Kumar, who is appearing for the petitioners in W.P.(MD).Nos.14350, 14353, 14354 and 14356 of 2020 and perused the materials available on record.

23. The Government of India in an unprecedented move had issued the direction to lock down with effect from 6.00 p.m. on 24.03.2020 thereby to close all the establishments with the intention to restrict the free movements of the people, thereby to control the COVID-19 Virus spread. Subsequently, an intimation was sent by the District Managers to all the Supervisors and Salesmen of the respective TASMACH Shops through S.M.S., to shut down the shop by 6.00 p.m. Due to this announcement, there was a huge uncontrollable crowd from 4.00 p.m. on 24.03.2020, to buy the liquors from the Shop. Therefore, the petitioner has decided to close the day account up to 4.00 p.m. and the amount of sales occurred up to 4.00 p.m., was reported to District Managers by SMS and the same was deposited on 26.03.2020. However, due to lock down, the liquor sold between 4.00 p.m. and 6.00 p.m. on 26.03.2020 was not able to inform the District Managers as the petitioner was not able to close the stock registers of the day after 4.00 p.m., since there was uncontrollable huge rush to buy liquor upto 6.00 p.m. In the normal course, if the Shop is closed at 10.00 p.m. the day account will be closed thereafter on the same day. But in the present case, the petitioner was not allowed to sit and close the accounts inside the Shop after 6.00 p.m. Therefore, without any other option to close the day stock register, the petitioner was compelled to keep entire sale proceeds in the locker which is available in the shop and closed the Shop at 6.00 p.m. and due to the same, the petitioner was not able to inform the total sales made between 4.00 p.m. and 6.00 p.m. to the District Managers.

24. To avoid the theft and further damage to the stocks available in the shop, as per the instructions of the respondents, the entire stock was transferred to a godown/Marriage Hall. When the shop was allowed to open and transfer the stocks to the respective godowns/marriage hall, where the stock audit was conducted by the respondents and found that there was a shortage in the stocks. When the same was informed to the petitioner, he immediately made reply stating that the said amount is not a shortage but it was after sales amount made between 4.00 p.m. and 6.00 p.m. on 24.03.2020.



25. When the respondents opened the shop for the purpose of shifting the stocks and stock verification, the petitioner had an opportunity to enter into the shop and to verify the collections that have been made, out of the sales occurred in between 4.00 p.m. and 6.00 p.m. on 24.03.202 and to finalise the day accounts for the sales occurred between 4.00 p.m. to 6.00 p.m. on the day of lock down announcement. Subsequent to the finalisation of the day account, he immediately contacted the District Manager but he has not given any permission to deposit the after sales amount in the bank, therefore, it appears that there was a delay of one or two days to deposit the sale proceeds in to the bank account.

26. The respondents contention was that it was not after sale, but it was a shortage amount, that is the reason why the respondents have issued the demand notice, as per the demand notice, the petitioner had remitted the shortage amount with interest and GST. It was only the contention of the respondent, but the petitioner categorically denied the said contention of the respondent and the petitioner was very firm on the stand of after sales.

27. When the respondent issued a show cause notice to the petitioner, with regard to the imposition of penalty under Section 7(b) (xiv) of the Code, the petitioner sent a reply stating that only the respondents have construed it as shortage amount but it was only the after sales amount.

28. When such being the case, without conducting any domestic enquiry to find out the fact that whether the said amount was after sales amount or it was a shortage amount; whether the petitioner was really sent any intimation about the after sales amount to the respective District managers and whether there was any obstacles to the petitioner to deposit, the after sales amount. All these facts can be proved only by conducting a domestic enquiry and enquiring the concerned District Managers, Supervisors, Salesmen and those who did stock verification. Without conducting any such enquiry and giving the opportunity to the petitioner to explain his case, in a personal hearing, it is not proper for the respondents to arrive at a preconceived manner as if that the amount deposited subsequent to the stock taken by the respondents as shortage amount particularly when the petitioner took a stand that the amount already deposited subsequent to the stock verification is only an after sales occurred between 4.00 p.m. to 6.00 p.m. On 24.03.2020. When the petitioner has taken definite stand that it was only an after sale amount and not a shortage amount, the respondents should not have come to the conclusion arbitrarily without conducting the domestic enquiry as shortage amount.



29. At this juncture, it is relevant to refer the investigation procedure laid down in Clause 6 of the Prevention and Detention of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014 (hereinafter called as Code), which reads as under:-

"6(a)

(b)

(c)

(d). If the charges are grave and if it is found that the continuance of the employee in service is injurious to the interest of fair investigation / disciplinary proceedings, he may be suspended pending enquiry. In such event, he shall be paid subsistence allowance as per rules.

(e). When the person does not admit the charges or the Management is not satisfied with the explanation offered by the person and the charges are sufficiently grave and serious to warrant a punishment other than censure, reprimand or warning, the Management shall conduct a domestic enquiry by any person of its choice.

(f)

(g). At the enquiry, the charge sheeted person will be given the fullest opportunity to cross examine the witnesses, examined on behalf of the Management and also examine witnesses, if any, on his behalf. It shall be responsibility of the charged person to bring the witnesses he chooses to examine on his behalf to the enquiry.

(h)

(i)

(j)

(k)

(l). Upon the conclusion of the enquiry, the Enquiry Officer will submit to the Management a report containing his findings after a careful examination of the proceedings of the enquiry. The report should be a self-contained speaking report.

(m). The charge sheeted person will be furnished with a copy of the findings of the Enquiry Officer after giving him an opportunity to make his representation, if any.

(n). Before imposing any punishment, consequent upon the charges proved at the enquiry, the person shall be given an opportunity to make his representation against the punishment proposed to be imposed to him.

(o). While imposing any punishment, the Management shall take into consideration the gravity of the misconduct proved, the previous record of service of the



employee and any aggravating circumstance that may exist."

30. A mere perusal of the investigation procedure would show that when a person does not admit the charges or the Management is not satisfied with the explanation offered by the person and the charges are sufficiently grave and serious to warrant a punishment other than censure, reprimand or warning, the Management shall conduct a domestic enquiry by any person of its choice. In the present case, it is not the case of censure, reprimand or warning but it is a case of imposition of penalty. Hence, it is clear that the respondents have not followed the investigation procedure as contemplated under Code.

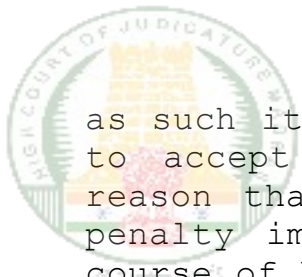
31. Therefore, this Court is of the opinion that the impugned order was passed in an arbitrary manner and in violation of the principles of natural justice, without conducting any domestic enquiry as contemplated in the Code and the procedure adopted in the course of decision making process is not as contemplated in the Code, thus, this Court find fault on such decision making process and the same is totally illegal and liable to be quashed.

32. The next question that arises for consideration is whether the penalty imposed in a disciplinary proceedings in a service matter is liable for GST, in terms of Section 7(1) (d) or 7(1-A) of the GST Act, 2017. Admittedly the said Section 7(1) (d) was not in force as on the date of passing the impugned order in the month of September 2020. The said Section was omitted with effect from 01.02.2019. The respondent, in his counter clearly stated that the notice of collection of GST was issued under Section 7(1) (d) alone. Therefore, without any provision/authority, the third respondent has issued the show cause notice to collect the GST, which is totally illegal.

33. Secondly, even assuming that Section 7(1A) of the Act r/w Rule 5(e) of the Rules will be applicable and the show cause notice was issued in accordance with the said provision, as contended by the learned counsel for the respondents, nowhere either in the show cause notice or in the impugned order or in the counter affidavit, the respondents never ever stated about the applicability of Section 7(1A) r/w Rule 5(e). It would be apposite to mention Section 7(1A), which reads as follows:-

'Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.'

34. By referring the above said Section, the respondents submitted that the petitioner refrained from performing to prevent the shortage of supply, so that they have imposed the penalty and



as such it would attract the GST. This Court is not in a position to accept the present approach of the respondents due to the reason that the imposition of any GST will arise only when the penalty imposed in the course of trade or commerce. During the course of business, if any agreement was entered, where there is a delay in supply or in payment, if any, penalty imposed as per the agreement, such penalty comes under the purview of Section 7 (1A) for the imposition of GST. However, in the present case, the penalty imposed was in a disciplinary proceedings to an employee which would not attract GST.

35. In any angle, the imposition of the GST by the respondents, to the penalty imposed, under Rule 7(b) (xiv) of the Code, in a disciplinary proceedings initiated against the employees would not attract the GST and the penalty referred therein would only refer the penalty imposed in the course of trade or commerce.

36. As such in the present case the penalty was imposed in a disciplinary proceedings which cannot be construed that the penalty imposed in the course of trade or commerce for the imposition of GST.

37. This Court finds substance in the arguments made by Mr. R. V. Rajkumar, learned counsel appearing for the petitioners in some of the writ petitions in the batch and this Court recorded its appreciation for his assistance in the present writ petition.

38. Therefore, I am of the opinion that the GST imposed by the respondents is illegal on the face of it and the same is liable to be set aside.

39. The learned counsel for the petitioner as well as the learned Standing counsel appearing for the respondents referred the case laws, which does not require any consideration in the present case as such this Court arrived at a well considered decision on the available facts. However, when this Court perused the case laws supplied by the respondents, this Court is of the view that the same will not be applicable for the present facts of the case, as such all the case Laws referred by the respondents are related to the facts of imposition of penalty in the course of trade or commerce, whereas in the present case, it is relating to the imposition of penalty in a disciplinary proceedings.

40. In the light of the above, the impugned order passed by the third respondent dated 28.07.2020 is set aside and this Writ Petition is allowed. Since the impugned order has been set aside by this Court and as the respondents have already issued the show cause notice and the petitioner has also filed his reply, now it is for the respondents, if so advised, to conduct a domestic



enquiry in accordance with the procedure as laid down in the Code.
No costs. Consequently, connected Miscellaneous Petition is
closed.

WEB COPY

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

akv

To

- 1.The Managing Director,
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
4th Floor, CMDA Towers,
Gandhi Irwin Bridge Road,
Egmore,
Chennai.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
Collector Office, Old Building First Floor,
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- 3.The District Manager,
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
SIPCOT Industrial Complex,
Pudukottai,
Pudukottai District 622 002.

+3 cc to Mr.T.Lajapathi Roy , Advocate SR.No.26483

+1 cc to Mr.H.Arumugam, Advocate SR.No.26551

Order made in
W.P. (MD) .No.10355 of 2020
18.12.2020

KM (01.02.2021) 13P 8C