BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.5572 of 2019
and W.M.P.(MD).No.4396 of 2019

S.Palanivelan ... Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes,
Fort St. George,
Chennai – 9.

2.The Commissioner of Commercial Taxes,
Chennai – 5.

3.The Inquiry Officer,
Joint Commissioner (CT) (ENFORCEMENT)
Madurai, Madurai District. ... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, by quashing the G.O.(2 D)No.1 dt.08.01.2019 passed by the 1st respondent herein by calling for the records from the 1st respondent.

For Petitioner : Mr.V.Chandrasekar
For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2.By referring the orders of Revision of Assessment passed in connection with five dealers, charges were framed against the petitioner on 13.01.2015 to the effect that the order was made in a casual manner without verifying the residential addresses of the dealers and that notice was sent to the deceased Proprietor of one of the firms. Based on the charge memo an enquiry was conducted, whereby, all the charges were held to be proved. The Disciplinary Authority, through the impugned order, had imposed a punishment of stoppage of increment for a period of three years with cumulative effect.

3.The learned counsel for the petitioner submitted that there was absolutely no revenue loss to the Department, since the major portion of the amount referred to in the charges have been recovered and for the remaining portion of amount the immovable property of the concerned dealer was attached and therefore, submitted that the punishment requires to be set aside.

4.Per contra, the learned Special Government Pleader placed reliance on the counter affidavit and submitted that there is a procedure contemplated under Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007, for service of notice, which was not adhered to by the petitioner and hence, the Enquiry Officer had rightly held the charges to be proved. She also made a reference to the revenue loss of Rs.2,01,896/- (Rupees Two Lakhs One Thousand Eight Hundred and Ninety Six only) and submitted that the punishment does not require interference.

5.I have given careful consideration to the submissions made by the respective counsels.

6.Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, provides for the procedure for the Disciplinary Authorities to impose a punishment. As per the said procedure, the Disciplinary Authority is required to consider the evidences before the Enquiry Officer and substantiate that the Enquiry Officer has found the charges as properly proved. It is on this basis, the Disciplinary Authority is empowered to impose a punishment. However, per contra to the procedure under Rule 17 (b), the Disciplinary Authority seems to have extracted the charges, findings of the Enquiry Officer and further representation given by the petitioner herein and in a single line had stated that the petitioner had failed to follow the due procedure as laid down in the statutory Rules, while issuing revision notice and passed the revision order.

7.It is pertinent to point out here that in his further representation, the petitioner herein had specifically raised certain objections stating that the dues of all the five dealers have been completely recovered through recovery process as well as by attachment of the immovable properties. In the further representation, it is stated that a sum of Rs.1,32,166/- (Rupees One Lakh Thirty Two Thousand One Hundred and Sixty Six only) from M/s.Mangalam Paper and General Stores; Rs.40,248/- (Rupees Forty Thousand Two Hundred and Forty Eight only) from M/s. Vinayaga Papers; Rs.24,707/- (Rupees Twenty Four Thousand Seven Hundred and Seven only) from M/s.Lalithas; and Rs.2,610/- (Rupees Two Thousand Six Hundred and Ten only) from M/s.Hursun Traders, have been fully settled. Insofar as M/s. Suriya Housing Promoters is concerned, out of the demand Rs.2,30,106/- (Rupees Two Lakhs Thirty Thousand one Hundred and Six only) a sum of Rs.30,210/- (Rupees Thirty Thousand

Two Hundred and Ten only) was collected and for the balance amount of Rs.2,01,896/- (Rupees Two Lakhs One Thousand Eight Hundred and Ninety Six only), the immovable property of the defaulter have been attached, which is also reflected in the Encumbrance Certificate of the Registration Authorities. In spite of having given all these figures, the Disciplinary Authority had not made a single reference to such realization of the tax arrears. On this ground, it could be said that the order itself is one of a non application of mind as well as a non speaking order. It is also relevant to point out that if the findings of the Enquiry Officer is taken to be correct, I am unable to appreciate as to how the Department was in a position to realize the entire arrears of the defaulters. On these findings, I am of the view that the punishment imposed on the petitioner requires to be interfered with.

8.For all the foregoing reasons, the impugned G.O.(2 D)No.1 dt.08.01.2019 passed by the 1st respondent, is hereby quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders for payment of the monetary benefits that would have been deducted, pursuant to the impugned punishment imposed through the order dated 13.02.2019, within a period of six (6) weeks from the date of receipt of a copy of this order.

9.Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government,
Commercial Taxes,
Fort St. George,
Chennai - 9.

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

3.The Inquiry Officer,
Joint Commissioner (CT) (ENFORCEMENT)
Madurai, Madurai District.

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-24357[F] dated 07/06/2022)

+1 CC to M/s.SPL.GP (SR-24622[F] dated 08/06/2022)

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