IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No. 5231 of 2020

M. Baskar ...Petitioner

Vs

1. The Commissioner of Commercial Taxes, (State Taxes),
   Ezhilagam, Chepauk,
   Chennai – 05.

2. The Joint Commissioner (ST)
   Salem Division,
   Salem & District.

3. The Assistant Commissioner of Commercial Tax
   Omalur, Salem District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari to call for the records from the respondents and in particularly second respondent pertaining to the impugned charge memo, ROC No. 22218/2019/A3 dated 09.11.2019 and quash the same.

For Petitioner : Mr. P. Vijendran

For Respondents : Ms. K. Vasanthamala
Government Advocate

ORDER

The petitioner has challenged the impugned charge memo dated 09.11.2019 issued to him on the following grounds:

a) The respondents have not suffered any loss of revenue;

b) The two contractors, for whom, assessment orders were passed by the petitioner in his official capacity as Assessing Officer on behalf of the respondents, have already paid the outstanding dues and as on date, no amount is due and payable by the said contractors for the subject assessment year;

c) An FIR was registered at the behest of the predecessor of the petitioner and the same was closed only due to the fact that the amount mentioned in the complaint given by the petitioner's predecessor was paid subsequently by the two contractors;

d) The assessment order, which is passed by the petitioner on behalf of the respondents, was quashed by an order of this Court in W.P.Nos. 4976 to 4981 of 2017 and remanded back to the Assessing Officer for fresh consideration on merits and in accordance with law and till date, pursuant to the said order, no assessment order has been passed in respect of the two contractors.

2. On the last hearing date, i.e. on 13.12.2022, this Court directed the learned Government Advocate appearing for the respondents to produce documentary evidence before this Court to show that the two

contractors referred to supra are liable to pay tax more than the sums mentioned in the complaint given by the petitioner's predecessor to the police.

3. Today, learned Government Advocate appearing for the respondents, on instructions, would submit that no tax is payable by the said two contractors to the respondents. She would also submit, on instructions, that pursuant to the order of remand passed by this Court in W.P.Nos. 4976 to 4981 of 2017, the Assessing Officer has once again confirmed the order passed by the petitioner as an Assessing Officer against the two contractors in the earlier assessment order passed by him. Therefore, it is clear that the petitioner has not committed any misconduct and no action can be taken against him in view of the fact that the assessment orders passed against the contractors have been once again quashed by an independent assessment made by another Assessing Officer.

4. In the normal circumstances, this Court will not interfere with a charge memo but no useful purpose will be achieved if a direction is issued to the respondents to complete the disciplinary proceedings initiated against the petitioner, within a time frame as the evidence placed on record before this Court as well as the statement made by the respondents before this Court through the learned Government Advocate

makes it clear that the petitioner cannot be held guilty for the alleged charge, in view of the fact that his assessment order passed earlier in his official capacity has once again been re-affirmed in the subsequent assessment order passed pursuant to the directions given by this Court in W.P.Nos. 4976 to 4981 2017. The FIR registered against the contractors (Dealers) at the behest of the predecessor of the petitioner has also been closed. Even if an inquiry is conducted in the disciplinary proceedings, the final result will only absolve the petitioner from any misconduct. Therefore, the impugned charge memo dated 09.11.2019 has to be necessarily quashed and the writ petition will have to be allowed.

5. For the foregoing reasons, the impugned charge memo dated 09.11.2019 issued by the second respondent is hereby quashed and the writ petition is allowed. No costs. Consequently, connected W.M.P.No. 6176 of 2020, is closed.

09.01.2023

Index : Yes / No
Internet : Yes/ No
mrn

To

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ABDUL QUDDHOSE, J.

(mrn)

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