IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.554 of 2020 and

W.M.P.No.651 of 2020

V.Mahendhiran ... Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005.

3.The Joint Commissioner of Commercial Taxes,
Intelligence - II, Greams Road,
Chennai 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the proceedings in C.D.No.2/22141/2019 dated 05.08.2019 on the file of the 1st respondent and quash the same as illegal, against law.

For Petitioner : Mr.A.Thiyagarajan SC for
Mr.M.Nalla Thambi

For Respondents : Mrs.Vasantha Mala, GA (Commercial Tax)

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorari to call for the records of the proceedings in C.D.No.2/22141/2019 dated 05.08.2019 on the file of the 1st respondent and quash the same as illegal.

2. Heard Mr.A.Thiyagarajan, learned Senior Counsel for the petitioner and Mrs.Vasantha Mala, learned Government Advocate (Commercial Tax) appearing for the respondents.

3. <u>The facts of case in brief are as follows:</u>

The petitioner was working as an Appellate Deputy Commissioner, Chennai. He has been given with the charge memo on 05.08.2019 containing the following charges:

> ***<u>Charge No.1:</u>***
>
> *You, Thiru V.Mahendran, formerly Appellate Deputy Commissioner (ST), Chennai (Central), now Deputy Commissioner (ST)(Appeals), Chennai - I, admitted the appeals filed by Tvl.V.S.Raviraj, a dealer in Works Contract, under the jurisdiction of Assistant Commissioner (ST), MMDA Colony Assmt. Circle,*

Chennai,without the mandatory payment of 25% disputed tax. Thus, you have violated the condition prescribed for admitting appeal under TNVAT Act as prescribed under Section 51 of the TNVAT Act. Thus, you are held responsible for the revenue loss of Rs.47,41,644/- being the amount of admitted tax in respect of total disputed amount of Rs.1,89,66,575/-.

Charge No.2:

That you, ThiruV.Mahendran, formerly Appellate Deputy Commissioner (ST), Chennai (Central), now Deputy Commissioner (ST) (Appeals), Chennai - I, has failed to properly function as a Government Servant and thereby you have failed to maintain absolute integrity and devotion to duty and by this aforesaid act, you have acted in a manner of unbecoming a Government Servant which is in violation of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

By challenging the above charge memo, the petitioner has filed this Writ Petition for seeking the above prayer.

4. The learned counsel for the petitioner submitted that the petitioner is a quasi judicial appellate authority exercising powers conferred under Section 51 of the Tamil Nadu Value Added Tax Act and Rules and hence, the order passed by the petitioner cannot be subjected to Tamil Nadu Government Servants' Conduct Rules 1973. It is claimed that the charge memo is *per se* illegal and it is given with *malafide* intention and without authority.

5. The respondents filed a counter by stating that the petitioner is not entitled to challenge the charge memo but he has to subject himself to the disciplinary proceedings.

6. The learned Government Advocate (Commercial Tax) appearing for the respondents submitted that normally when disciplinary proceedings are initiated and the same is pending, the petitioner is not entitled to file a Writ Petition for seeking any relief without participating in the disciplinary proceedings. The peculiar facts which led to the issuance of charge memo against the petitioner requires a little elaboration. The petitioner who is a quasi judicial authority in his capacity as an appellate authority has entertained the appeal without mandating the payment of 25% of the admitted tax as prescribed under Section 51 of the Tamil Nadu Value Added Tax Act, 2006. For the sake of clarity, Section 51 of the Tamil Nadu Value Added Tax Act is extracted hereunder:

> *"**51. Appeal to Appellate Deputy Commissioner**:-*
>
> *......provided further that in the case of an order under Section 22, Section 24, Section 26, Sub-sections (1), (2), (3) and (4) of Section 27, Section 28 or Section 29, no appeal shall be entertained under this Sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such installments thereof as might have become payable, as the case may be, and twenty five percent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant."*

7. If the petitioner has chosen to pass any orders within his powers as an Appellate Deputy Commissioner and if the Department aggrieved due to the said order, the rightful course open to the Department is to challenge the said order before the appropriate forum. Even if the order of the petitioner has been wrongly passed that can be set right only through the appellate remedy. A quasi judicial authority cannot be subjected to disciplinary proceedings for any act done in his quasi judicial capacity while dealing a case and passing orders, without any *malafide* intention.

8. Even from the charge memo, it is seen that there is no allegation that the petitioner had acted with any *malafide* intention. Had it been done with any *malafide* intention or ulterior motive, there might be some scope for taking action and that too after getting the base report through Vigilance Department. Admittedly, the orders passed by the petitioner is appealable and that can be challenged before the Appellate Tribunal. Infact on a reference made by the present Deputy Commissioner (Appeal) Chennai to the Chairman, Tamil Nadu Sales Tax Appellate Tribunal for seeking an opinion as to whether the impugned appeal has to be entertained only after paying 25% of the disputed tax. The chairman, Tamil Nadu Sales Tax Appellate Tribunal has given the following clarification:

> *"To file an appeal before the first appellate*

authority, the relevant provisions are contained in Section 51 of the TNVAT Act, 2006.

Amongst other requirements, one of the conditions to get the appeal admitted by the first appellate authority is the payment of twenty five percent of the difference of the tax assessed by the assessing authority and the tax assessed by the appellant.

In all the cases, the appellants have disputed the entire assessment and the tax demand raised by the assessing authority and in such situation the entire tax demand made by the assessing authority is the subject matter of the appeals.

As the appellants were carrying out civil work allotted by the Corporation of Chennai and the Corporation of Chennai deducted tax at source as per the provisions of Section 13 of TNVAT Act, 2006.

Hence, the amount of TDS deducted by the contract or other person which is a cash remittance can be considered for discharging of the stipulation of remittance of 25% of the disputed tax mentioned in Section 51 of the TNVAT Act, 2006."

9. The above would only show that the allegation of not collecting

25% of the admitted tax itself was made without looking into the details properly by the respondents. When there is no loss of revenue and 25% of the admitted tax has already been deducted through Tax Deducted at Source (TDS), it is unnecessary for the respondents to rack up an issue on that ground.

10. Time and again, it is held by the Hon'ble Supreme Court that the charge sheet / show cause notice can be quashed if the authority is not competent to issue the same and it infringes the right of the party. The judgment in the case of ***The Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha, reported in (2012) 11 SCC 565***, it is held as under:

> *"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge -sheet does not infringe the right of a*

party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court.

11. In State of Orissa Vs.Sangram Keshari Misra, this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority."

11. If the order passed by the quasi judicial authority is taken as a foundation for bringing the quasi judicial authority under disciplinary proceedings, no quasi judicial authority can discharge his functions without fear. While exercising the quasi judicial power, the authority concerned should have the independency to decide the issue within his power. Even wrong interpretation of law or wrong appreciation of facts cannot be the reason to issue charge memo against the authority exercising quasi judicial powers and the impugned proceedings can be challenged only by way of preferring an appeal. The charge memo issued by the first respondent is completely without jurisdiction and authority. Further the respondents have also failed to properly appreciate the impact of Tax Deducted at Source (TDS) and have chosen to come to arrive at a short conclusion that 25% of the admitted tax has not been paid by the appellant. Since the short sighted charge memo issued by the respondents directly infringes upon the right of the petitioner and his authority as a quasi judicial officer. Hence, the impugned proceedings is liable to be set aside.

12. In the result, this Writ Petition is allowed and the proceedings passed by the first respondent in C.D.No.2/22141/2019 dated 05.08.2019 is quashed and the respondents are directed to give all consequential and attendant benefits, if any, to the petitioner. Consequently, connected miscellaneous petition is closed. No costs.

05.10.2023

Index : Yes
Internet : Yes/No
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To

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R.N.MANJULA, J.

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