IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.22463 of 2015
Date of Decision:08.11.2023

A.S.Kotwal

….Petitioner

vs.

Oriental Bank of Commerce and another

….Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ritesh Khatri, Advocate,
for the petitioner and
Ajay Singh Kotwal, petitioner in person
Mr. R.N.Lohan, Advocate for
the respondent-Bank

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JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 06.06.2015 (Annexure P-12) whereby revision petition preferred by the petitioner has been dismissed; order dated 10.03.2015 (Annexure P-10) whereby appeal of the petitioner has been dismissed and order dated 26.08.2014 (Annexure P-8) whereby disciplinary authority has imposed penalty upon the petitioner in terms of Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

2. Learned counsel for the petitioner inter alia submits that respondent-bank vide circular dated 03.12.2012 has revised Staff

Accountability Policy 2011. Clause 9.2 of the revised guidelines provides that staff accountability shall not be looked into for any lapse which has not been pointed out within 4 years from the date of alleged event. In Annexure 'A' enclosed with the said guidelines, different events are enlisted which includes terms of sanction stipulated as per credit policy of the bank. The allegation against the petitioner was that on different dates during 2008-09, the petitioner enhanced credit limit of two different entities. The limit was enhanced contrary to the guidelines of the bank. The alleged event took place during 2008-09 and charge sheet came to be served in December' 2013 i.e. after the expiry of 4 years from the date of alleged incident. The respondent-bank can initiate proceedings beyond 4 years, if there is allegation of fraud or mala fide is inferable or criminal offence is involved. The respondent in the charge sheet neither alleged fraud nor made specific allegation of mala fide. In the absence of allegation of fraud or mala fide, the authorities were bound to issue charge sheet within 4 years from the date of alleged incident. The bank has recovered the entire loan amount which was sanctioned by the petitioner, thus, no loss was caused to bank by act and conduct of the petitioner. Clause 9.2 of revised guidelines reads as:

> "9.2 In general the staff accountability shall not be looked into for any lapse, which has not been pointed out in the two successive inspection reports or 4 years from the date of the event (i.e. date of happening of any event as enlisted in Annexure A) whichever is later. In case any major irregularity attributable to the previous inspection period is detected subsequent to the second audit/inspection, the inspectors

concerned will also be held accountable and be liable for action/disciplinary proceedings. This time limit will not apply to the cases of (i) frauds ii) other criminal offences or iii) cases where malafide are inferable."

3. Learned counsel for the respondent-bank by order dated 18.10.2023 was granted time to verify whether allegation of fraud or mala fide was specifically made in the memorandum/charge sheet (Annexures P-1 and P-5).

4. Learned counsel for the respondent-bank submits that it is factually correct that authorities in the memorandum/charge sheet did not specifically make allegation of fraud or mala fide, however, mala fide was inferable from the act and conduct of the petitioner. The petitioner enhanced credit limit beyond his jurisdiction, thus, he was well aware that his act amounts to misconduct.

5. From the perusal of Clause 9.2 of revised guidelines, it is quite evident that two different periods of limitation have been prescribed for taking action against an erring official/officer i.e. normal period of four years from the date of event and in case of fraud, no period has been prescribed meaning thereby bank can initiate proceedings beyond four years.

6. In the case in hand, admittedly, in the memorandum/charge sheet, no allegation of fraud or mala fide was made and even it was not alleged that from the act and conduct of the petitioner mala fide can be inferred. It is settled proposition of law that charge sheet disclosing adverse material is the foremost fundamental requirement of principles of law. It is further settled proposition of law that adjudicating authority cannot travel

beyond the show cause notice. A two judge Bench of Hon'ble Supreme Court of India in **Sahara India (Firm) Lucknow Versus Commissioner of Income Tax, Centra-I and Another; (2008) 14 SCC 151** has categorically held that adjudicating authority cannot travel beyond the show cause notice.

7. The charge sheet is a form of show cause notice. In the show cause notice, there was no allegation of fraud or mala fide, thus, respondents could not invoke extended period of limitation. Show cause notice/charge sheet is foundation of the proceedings and authorities are bound to disclose adverse material and basis of allegations. In the absence of invoking extended period of limitation, the respondents could not initiate proceedings against the petitioner beyond four years i.e. maximum limitation period prescribed by the aforesaid clause.

8. A two Judge Bench of Hon'ble the Supreme Court in **Collector of Central Excise vs. H.M.M. Limited, 1995 Suppl (3) Supreme Court Cases 322** while dealing with invoking of extended period of limitation under Section 11A of Central Excise and Salt Act, 1944 has held that in the absence of specific allegations of fraud or mis-statement or suppression of facts, extended period cannot be invoked. The relevant extracts from the judgment read as under:-

> *"The assessee contended before the Additional Collector of Central Excise that the show-cause notice was time barred under the main part of Section 11-A since it was issued after the expiry of the period of six months stipulated therein but the Additional Collector sustained the notice on the ground that it was within five years, impliedly holding that the purported action was under the proviso to Section 11-A of the Act. There is no dispute that the show-cause notice cannot be sustained*

under sub-section (1) of Section 11-A unless the proviso is attracted. Admittedly, it is beyond the period of limitation of six months prescribed under Section 11-A(1) but it is within the extended period of 5 years under the proviso to that sub-section. Now in order to attract the proviso it must be shown that the excise duty escaped payment by reason of fraud, collusion or willful misstatement or suppression of fact or contravention of any provision of the Act or of the Rules made thereunder with intent to evade payment of duty. In that case the period of six months would stand extended to 5 years as provided by the said proviso. Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or wilful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show-cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practised or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act. The Additional Collector while conceding that the notice had been issued after the period of six months prescribed in Section 11-A(1) of the Act had proceeded to observe that there was wilful action of withholding of vital information apparently for evasion of excise duty due on this waste/by-product but counsel for the assessee contended that in the absence of any such allegation in the show-cause notice the assessee was not put to notice regarding the specific allegation under the proviso to that sub-section. The mere non-declaration of the waste/by-product in their classification list cannot establish any wilful *withholding of vital information for the purpose of evasion of excise duty due on the said product. There could be, counsel contended, bona fide belief on the part of the assessee that the said waste or by-product did not attract excise duty and hence it may not have been included in their classification list. But that per se cannot go to prove that there was the intention to evade payment of duty or that the assessee was guilty of fraud, collusion, misconduct or suppression to attract the proviso to Section 11-A(1) of the Act. There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso. In the instant case that having not been specifically stated the Additional Collector was not justified in inferring (merely because the assessee had failed to make a declaration in regard to waste or by-product) an intention to evade the payment of duty. The Additional Collector did not specifically deal with this contention of the assessee but merely drew the inference that since the classification list did not make any mention in regard to this waste product it could be inferred that the assessee had apparently tried to evade the payment of excise duty."*

9. The aforesaid judgment is squarely applicable to the present case. The respondent bank issued charge sheet without alleging fraud or mala fide, thus, extended period of limitation could not be invoked and bank

was bound to initiate proceedings within four years from the date of alleged offence.

10. In the wake of above discussion and findings, the present petition deserves to be allowed and accordingly allowed. The impugned orders dated 06.06.2015 (Annexure P-12), dated 10.03.2015 (Annexure P-10) and dated 26.08.2014 (Annexure P-8) are hereby set aside. It is made clear that respondent-bank is at liberty to proceed afresh against the petitioner if permissible by law.

(JAGMOHAN BANSAL)
JUDGE

08.11.2023
paramjit

Whether speaking/reasoned: Yes
Whether reportable: Yes