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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.4023 of 2020
and W.M.P.No.4755 of 2020

V.Mahendran,
Appellate Deputy Commissioner (CT),
Chennai (Central),
Greams Road,
Chennai - 600 006. ... Petitioner

versus

1.The Principal Secretary to Government,
Commercial Taxes and Registration (E2) Department,
Secretariat, Chennai - 600 009.

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the record of order G.O.(D)No.245 dated 26.11.2019 on the file of the 1st respondent and quash the same as it is arbitrary, unreasonable and disproportionate to the show cause notice.

For Petitioner	:	Mr.A.Satheesh Murugan
For Respondents	:	Mrs.K.Vasanthamala Government Advocate (Taxes)

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ORDER

The petitioner has filed this writ petition seeking to quash the Government Order passed in G.O.(D)No.245, Commercial Taxes and Registration (E2) Department, dated 26.11.2019 on the file of the 1st respondent.

2. Heard Mr.A.Satheesh Murugan, learned counsel for the petitioner, Mrs.K.Vasanthamala, learned Government Advocate (Taxes) for the respondents and perused the materials available on record.

3. The petitioner, who joined as an Assistant Commercial Tax Officer on 18.04.1990 and was promoted as a Deputy Commercial Tax Officer on 10.08.2001. Subsequently, he was promoted as a Commercial Tax Officer on 15.03.2007 and the said post was redesignated as Assistant Commissioner of Commercial Taxes and his next promotional post is Deputy Commissioner of Commercial Taxes. While so, the second respondent has initiated disciplinary proceedings against the petitioner for some of the charges and given with the punishment of stoppage of 2 increments without cumulative effect. The same was challenged by the petitioner by way of

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preferring an appeal and the said appeal was also dismissed by confirming the order of the Disciplinary Authority. Now this Writ Petition has been filed on the ground that the Appellate Authority did not consider the grounds of appeal raised by the petitioner and the Appellate Authority has simply confirmed the order of the Disciplinary Authority without any merits.

4. Mr.A.Satheesh Murugan, learned counsel for the petitioner drew the attention of this Court to some of the grounds raised by the petitioner in the grounds of appeal, wherein he has raised a ground that there is no provision prescribed under the Tamilnadu Value Added Tax Act, 2006 and the Tamilnadu Value Added Tax Rules, 2007 to scrutinize the monthly returns of the Assessing Officer every month and insert it in the system. He has also stated that some technical points have been raised by the petitioner in respect of certain special provisions found in the relevant Act and Rules. Even though the Disciplinary Authority has dealt with the factual aspect while passing the order of punishment, the technical aspects were not adverted to.

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5. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) for the respondents submitted that the petitioner at each and every stage of the proceedings attempted to protract the enquiry proceedings; at the first instance the petitioner did not give any reply to the show cause notice and he did not participate in the enquiry proceedings by cross examining the witnesses. On the strength of the order obtained in the writ petition, the denova trial was initiated and at the conclusion of the enquiry proceedings, the petitioner was found guilty and he was given with the punishment of stoppage of 2 increments without cumulative effect. It is further submitted that the petitioner was sent on compulsory retirement.

6. Whatever may be the subsequent action taken against the petitioner, the fact remains that the petitioner has raised certain technical aspects in the grounds of appeal filed by him. Though the disciplinary action has been initiated against the petitioner initially under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, by virtue of the orders passed, the proceedings have been initiated under Rule 17(a) of the above said Rules by imposing minor punishment to the petitioner.

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7. The Appellate Authority has not dealt the technical grounds raised by the petitioner. This Court cannot sit as an appellate authority over the orders passed by the Disciplinary Authority. However the only aspect which is initiated to look into the other grounds raised by the petitioner, the matter to the Appellate Authority to pass a speaking order in respect of certain technical grounds raised by the petitioner and then pass orders. So the order now passed will not have any impact on the punishment already imposed on the petitioner.

With these limited aspects, this Writ Petition is **disposed**, by setting aside the order of the Appellate Authority dated 26.11.2019 and the matter is remitted back to the Appellate Authority to reconsider the grounds of appeal and pass an order afresh within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

04.01.2024

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

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To

1.The Principal Secretary to Government,
Commercial Taxes and Registration (E2) Department,
Secretariat, Chennai - 600 009.

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

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R.N.MANJULA, J.

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