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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2025

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.5870 of 2024
and
W.M.P.No.6505 of 2024

A.Rajaram .. Petitioner

Vs.

1.The Principal Secretary / Commissioner of Commercial Taxes,
2nd Floor, Chepauk, Chennai – 5.

2.The Deputy Commissioner (ST)
Poonamallee Zone,
Chennai – 123. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the 1st respondent in CD1/4290851/2023 dated 03.10.2023 and to quash the same and consequently, direct the first respondent to accord promotion to the post of Deputy Commissioner below S.Selva Ganapathy above S.K.Ashok Kumar.

For Petitioner .. Mr.S.Vijayakumar, Senior Counsel
For Mr.K.N.Pandian

For Respondents .. Mr.K.Vasanthamala, Govt. Advocate

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ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to a charge memo issued by the 1st respondent on 03.10.2025 and to quash the same. The petitioner seeks that promotion must be granted to him to the post of Deputy Commissioner of Commercial Tax.

2.In the affidavit filed in support of the writ petition, it had been stated that petitioner had been appointed as Typist in the Commercial Tax Department on 30.05.1990 and later was promoted as Assistant in 1999 and then to the post of Assistant Commercial Tax Officer in the year 2006 and subsequently promoted to the post of Commercial Tax Officer in the year 2010 and finally, as Assistant Commissioner of Commercial Tax in the year 2015. It had been stated that during that particular period, when he was holding full additional charge as Assistant Commissioner (ST) Vellore (North) Assessment Circle, one of the assessees, MI Enterprises had submitted returns for assessment under the GST Act for the assessment years 2019 – 2020, 2020 – 2021, 2021 – 2022 and 2022 – 2023. The petitioner as the proper officer or the officer who passes the order in the first

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instance, had according to him, perused the relevant returns and supporting documents and passed orders of assessment on 31.01.2023. They had also been served on the assessee. The petitioner claims that those orders had been passed after exercising due care and caution and following the respective rules and regulations as contemplated under the GST Act.

3.It had been further stated that the department had taken up the orders passed by the petitioner in appeal before the Deputy Commissioner / First Appellate Authority who had, after hearing the parties, set aside the order and remanded the matter back for fresh assessment.

4.Thereafter, a charge memo which is now impugned in this writ petition came to be issued on 03.10.2023 wherein, nine charges had been levied against the petitioner herein. Primarily, guidelines had been issued by the GST Council on 18.03.2019 with respect to verifying correctness and genuineness of a claim of input tax. It is contended that when there was fake invoicing in a fraudulent claim, the same had not been diligently examined by the petitioner. In effect, it is contended that the petitioner had assessed fraudulent and fake claims filed by the said assessee.

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5.As a matter of fact, quite apart from the GST Council guidelines with respect to the specific case dealt with by the petitioner a factual report had been forwarded by the Inspection Officer in Letter No.GSTIN:33AJIPI8659J1ZR/2022-23 dated 11.11.2022 in which it had been revealed that the assessee was not doing any business and had issued fake invoices. Overlooking that factual report, the petitioner had processed and allowed the fake input claim and thereby had caused loss to both the Government of Tamil Nadu and also to the Union of India to an extent of Rs.1,04,93,163/- for the State of Tamil Nadu and a sum of Rs.1,04,93,163/- for the Union of India. The further charges revolved around this particular assessment made by the petitioner. This assessment made by the petitioner can never be claimed, as stated by him, to fall within exercising due care and caution and following the rules and regulations. The petitioner had not exercised any due care and had not followed any guidelines.

6.The learned Senior Counsel pointed out the order and stated that the order is a quasi judicial order and therefore, departmental proceedings cannot be initiated on the basis of such order. In this connection, the learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme

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Court reported in ***2025 SCC OnLine SC 693, Amresh Shrivastava Vs. State of Madhya Pradesh and others*** wherein, the Hon'ble Supreme Court had examined a situation, wherein the Government was not precluded from taking disciplinary proceedings for violation of the Code of Conduct. In paragraph 15 it had been held as follows:

> *"15. As regards the first question in K.K. Dhawan case (supra), this Court carved out the following situations where the government is not precluded from taking disciplinary actions for violation of the Code of Conduct:—*
>
> *"(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;*
>
> *(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;*
>
> *(iii) if he has acted in a manner which is unbecoming of a Government servant;*
>
> *(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;*
>
> *(v) if he had acted in order to unduly favour a party;*
>
> *(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."*
>
> *After carving out the above exceptions, this Court proceeded to further observe that mere technical violations or the fact that an order is wrong, if not falling under the above enumerated*

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instances, does not warrant disciplinary actions. It was further reiterated that each case depends on its facts, and absolute rules cannot be postulated. The above instances as referred and reproduced hereinabove, are thus only a guide and not meant to be mandatorily adhere to without exception."

7.Even in the above said extract, the Court had only stated that mere technical violations or that if an order is wrong and if it not falls under the enumerated instances would not warrant disciplinary action.

8.But here, the petitioner is specifically charged with processing and allowing fake tax invoices particularly, when a report had been issued that the invoices were fake and the assessee was not doing any business at all. When the assessee was not doing any business there is no issue of claim any assessment and forwarding invoices for transactions, which transactions would not be possible since no business was done by the assessee.

9.The learned Senior Counsel also placed reliance on the order of a learned Single Judge of this Court and claim that it was passed in a very similar circumstances in ***W.P.No.6534/2009, S.Abdul Basheer V. State of Tamil Nadu and others***, wherein by an order dated 07.09.2021, the learned

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single Judge had examined the initiation of disciplinary proceedings for culpable negligence and carelessness in framing assessment under the GST Act. The charges, therein, was that the petitioner had acted with culpable negligence and recklessness and failed to discharge his duty with devotion. They are far, far different from the charges levied against the petitioner of processing fake invoices, even though there was a factual report pointing out that the assessee was not doing any business and had forwarded fake invoices. The facts are certainly distinguishable and are distinguishable.

10.I hold that the challenge to the charge memo will necessarily have to fail.

11.The learned Senior Counsel pointed out the statement made in the counter affidavit filed by the respondents that even pending the writ petition, the enquiry had commenced and had been completed. The option is with the petitioner to participate in further proceedings. But however, the challenge made to the charge memo necessarily fails.

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12.With the above observations, this Writ Petition stands dismissed. No costs. The respondents may proceed further with the disciplinary proceedings in manner know to law and endeavour to complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected Writ Miscellaneous Petition is closed.

08.04.2025

Index:Yes/No
Internet:Yes/No
smv

To

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C.V.KARTHIKEYAN,J.

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