IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM:

THE HON'BLE MR. JUSTICE C.V. KARTHIKEYAN

W.P. Nos.23783, 23639 and 30913 of 2024
and
W.M.P. Nos.26023, 25857, 33494 and 33495 of 2024

A.R. Babuji ... Petitioner in W.P. No.23783 of 2024

S. Lalithambigai ... Petitioner in W.P. No.23639 of 2024

S. Sivakumari
Assistant Commissioner (State Taxes)
(under suspension)
Vellore (South)
Assistant Circle Vellore Division,
Commercial Taxes Department,
Vellore. ...Petitioner in W.P. No.30913 of 2024

Versus

Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005. ... Respondent in W.P. Nos.23783 of 2024 and 23639 of 2024

1. The State of Tamilnadu represented by
   the Secretary to Government,
   Commercial Taxes and Registration
   (E1) Department,
   Secretariat,
   Chennai – 600 009.

2. The Principal Secretary /
   Commissioner for Commercial Taxes,
   Chepauk,
   Chennai – 600 005. ... Respondents

Prayer in W.P. No.23783 of 2024 : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the respondent's order, dated 12.09.2023 bearing Proc. No.CD2/5566023/2023-III and quash the same.

Prayer in W.P. No.23639 of 2024 : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the respondent's order, dated 12.09.2023 bearing Proc. No.CD2/5566023/2023-I and quash the same.

Prayer in W.P. No.30913 of 2024 : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the impugned order, dated 03.10.2023 passed in G.O. (D) No.304 issued by the 1st respondent against the petitioner and quash the same.

For Petitioner in W.P. Nos.23639 and 23783 of 2024	:	Mr.V. Vijayashankar for Mr.J. Adithya Reddy
For Petitioner in W.P. No.30913 of 2024	:	Mr.K.M. Ramesh Senior Counsel for Mr.A.Ganesan
For Respondents in all W.P.s	:	Mr.C. Harsharaj Spl. Govt. Pleader (Taxes) for R1 Ms.G. Vasanthamala Govt. Advocate for R2

COMMON ORDER

These writ petitions have been filed in the nature of certiorari to call for the records relating to orders of the first respondent dated 03.10.2023, 12.09.2023 & 12.09.2023 and to quash the same. By the said orders which are now questioned before this Court, the petitioners herein had been placed under suspension. It had been directed that the petitioners would be paid Subsistence Allowance and Dearness Allowance as admissible under Rule 53 (1) of the Fundamental Rules. It had been contended by the learned senior counsel for the petitioners that the petitioners have been suffering an order of suspension for more than a year and 3 months and therefore it was only appropriate that the petitioners order of suspension is revoked.

2. In the affidavits filed in support of these writ petitions, it had been contended that the order of suspension had been passed on the basis of a quasi judicial order passed by the petitioners herein in their capacity as Assistant Commissioners assigned with statutory duties under the Goods and Services Tax Act (GST). Among many of other statutory functions, the petitioners were also assigned with the duty of passing orders of refund claims under the statutory forms and therefore when an order is passed in the nature of quasi judicial order there is adjudication of an issue and if the said adjudication is complained, it is contended that the proper manner would be to challenge the same before the appropriate authority.

3. It is stated that if there had been delay in processing the refund claims, then further loss would have accrued owing to payment of interest

and by passing the said order the petitioners have actually saved the Government from being mulcted with payment of interest. It had been further stated that at the time when the orders were passed the petitioners had no iota of suspicion that fraudulent bills had been submitted. Orders had been passed on the basis of the records produced and perused. It had been stated that there was no surreptitious intent in granting the refund amounts in the orders complained. It is therefore contended that taking into consideration the long period of suspension and also more particularly that the suspension orders have been passed owing to the quasi judicial orders, the orders of suspension should be revoked and interfered with by this Court.

4. A counter affidavit had been filed on behalf of the respondents wherein it had been contended that on 01.08.2023, the Principal Commissioner, Customs (Preventive), Bihar in their letter dated 01.08.2023 had cautioned the respondents not to process refund of 5 taxable persons registered in Tamil Nadu and falling under the State jurisdiction. It had also been stated that export of sensitive commodity

"Tiles" by 5 exporters having GSTIN in the State of Tamil Nadu have been found involved in fake exports without effecting movement of goods from Tamil Nadu to Nepal through various Land Customs Stations (LCS) of this Commissionerate. It was also found from the website that all the said 5 exporters are registered under the administrative control of State of Tamil Nadu. Though the legislation under which these orders had been passed was called Goods and Services Tax Act (GST), there had been no movement of goods, the goods had not been exported to Nepal or to any other place. There was only preparation of documents and therefore, a caution was placed by the Principal Commissioner, Customs (Preventive), Bihar in their letter dated 01.08.2023.

5. It had further stated in the counter affidavit that the Department had conducted preliminary enquiry into the said matter and the petitioners were found to have compromised their official duties and there was prima facie lapse on the part of the GST officials in the issuance of registration without proper verification and in showing undue haste in sanctioning of refund claims to the fake exporters. It had been further stated that there

had been substantial loss to the Government, running into crores owing to the alleged acts of commission by the petitioners herein. It had been further stated that since a detailed enquiry will have to be made into all aspects, the petitioners would have to continue to remain suspended and it was therefore stated that the writ petition deserved to be dismissed. The respondents had also sought further direction as to the commencement or conclusion of the disciplinary proceedings pursuant to the issuance of the impugned orders.

6. The learned Senior Counsel appearing for the petitioners submitted that even charge memos had not been issued and therefore there was no possibility of disciplinary proceedings being commenced. In fact this statement would work to the disadvantage of the petitioners since it would only indicate that the petitioners are not interested in participating in the disciplinary proceedings.

7. On the side of the respondents, however, it is affirmed that if the disciplinary proceedings are commenced, then from the date of such

commencement, the respondents are confident of marshalling the witnesses and producing the relevant documents and that the disciplinary proceedings would be completed within a period of one month. But however it would all depend on the co-operation extended by the petitioners herein.

8. I have carefully considered the arguments advanced and perused the materials available on record.

9. The learned Senior Counsel appearing for the petitioners also placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and another Vs Ashok Kumar Aggarwal*** reported in ***(2013) 16 SCC 147***, wherein it had been held that the purpose of suspension is to *"keep the delinquent out of mischief range and to complete disciplinary proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his positions"*. It had further been stated that "*the gravity of alleged*

misconduct would not be a factor but possibility of the delinquent interfering with the enquiry process has to be taken into consideration".

10. The learned Senior Counsel further relied upon another judgment of the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary Vs Union of India (UoI)*** and others reported in ***2015 (3) CTC 119*** wherein the Hon'ble Supreme Court had frowned upon the practice of keeping a public servant under indefinite suspension. It had been urged by the Hon'ble Supreme Court that there should be periodical review about the necessity to keep the delinquent under suspension and preferably such review should be conducted once in three months. The possibility of transferring a delinquent to a non-sensitive post should also be examined. It had been further observed that placing the delinquent on suspension and payment of subsistence allowance would only work to the advantage of the delinquent since without extracting work the respondents would place themselves under an obligation to pay subsistence allowance which would rise from 50% to 75% and some times if the period extends to even 100%.

11. The facts in this case are unique. A perusal of the orders of suspension show that the petitioners are alleged to have issued registration certificate and sanctioned refund to those who were later found to be fake exporters. Even though a case could be made out by the petitioners that the fact that the exporters were fake came to knowledge later, still the undue haste under which the papers were processed is very starkling. It is very specifically seen from the impugned orders that the specific allegation of the respondents is that the papers had been processed within three hours of the starting time of the office. The timings had been given in the suspension orders.

12. It had also been observed that the papers had also been processed after closing of the office hours. The amount involved runs into crores. The petitioners have to answer as to why they showed specific preference and special interest in processing the papers of these exporters. The petitioners should also explain as to how in the teeth of a caution issued by the Principal Commissioner, Customs (Preventive), Bihar by an

earlier letter dated 01.08.2023, they still proceeded to process the papers. It had been very clearly that the 5 exporters were having fake GST numbers and they had never exported any product and they had only forwarded necessary papers for processing which the petitioners found extremely convenient to process with undue haste and also after office hours. The petitioners have to answer for their act. It cannot be brushed aside as an innocent quasi judicial order.

13. Any order passed, quasi judicial or judicial, has to be passed with a deep sense of responsibility of the consequences of such order. No authority who passes any order, quasi judicial or judicial, can take a defence that they were innocent in passing of the said order. Every order has to be passed after due application of mind and after coming to subjective satisfaction about the necessity to pass such an order. The order has to be passed after determining whether there would be any loss or caused by the said order.

14. The petitioners were not working in any department which

would not directly cause loss to the Government. The petitioners were working as Tax Officers and they are aware and should be aware that any order passed on behalf of exporters who had forwarded the papers with intention to commit an act of fraud on the Government, would cause loss to the Government. The petitioners had that particular responsibility.

15. If the petitioners were not interested in taking up that responsibility, the petitioners had a wonderful option to resign and walk away. Having taken up the onerous task of discharging duty, the petitioners should discharge their duty with utmost caution and with extreme care that loss is not suffered. The petitioners should not have extended their favourism to fake exporters. Whether the petitioners had knowledge that the exporters are fake or not is a fact known to them alone and it can be determined only during the process of enquiry.

16. There is also a direct possibility of the petitioners interfering with the records of the respondents. The petitioners have access to such records and the petitioners now would be very much interested in

ensuring that the records are screened away from being scrutinised any further. There is also the possibility of there being direct interference by the petitioners not only on the witnesses of the respondents who are to depose during the course of disciplinary proceedings but also to tamper with the documents already available. If they are given access to the office premises there is every possibility of interference with the system and creating documents which would frustrate the very purpose of the disciplinary proceedings.

17. The learned Senior Counsel for the petitioners submitted that in similar matters a learned single Judge had quashed the suspension order. The learned Special Government Pleader for the respondents stated that there are also orders of learned single Judges wherein similar orders have been up held.

18. The dictum of the Hon'ble Supreme Court is very clear. It had been stated that the reason for placing the delinquent under suspension must be to ensure that there is no tampering of the records. It is a decision

to be exercised by the respondents. In this case, I hold that the petitioners will have direct opportunity to tamper with the evidence particularly taking into consideration the fact that now it is known that they have dealt with exporters who are fake and fraudulent and therefore to cover the tracks there is possibility they would tamper with available records. This should not be permitted and it cannot be permitted and must not be permitted.

19. I am not inclined to interfere with the orders of suspension. These writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

07.04.2025

dpq
Index: Yes/No
Speaking order / Non speaking order

C.V. KARTHIKEYAN, J.

dpq

To
1. The State of Tamilnadu represented by
 the Secretary to Government,
 Commercial Taxes and Registration
 (E1) Department,
 Secretariat,
 Chennai – 600 009.

2. The Principal Secretary /
 Commissioner for Commercial Taxes,
 Chepauk,
 Chennai – 600 005.

W.P. Nos.23783, 23639 & 30913 of 2024
and
W.M.P. Nos.26023, 25857, 33494
and 33495 of 2024

07.04.2025