IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 700 091

Present :-
The Hon'bleMrs.UrmitaDatta(Sen)
MEMBER (J)

-AND-

The Hon'bleMr. P. Ramesh Kumar
MEMBER(A)

J U D G E M E N T
-of-
Case No. OA-172 of 2016

KoushikPattanayak.……Applicant.

-Versus-

State of West Bengal & others….Respondents

For the Applicant :- Mr. A. Maiti, Learned Advocate

For the State Respondents :- Mr. S. N. Roy, Learned Advocate

Judgement delivered on : 4th February, 2020

The Judgement of the Tribunal was delivered by :-
Hon'bleMrs. UrmitaDatta (Sen), Member(J)

J U D G E M E N T

The instant application has been filed praying for the following reliefs :

(a) An order by directing the respondents to cancel/quash and/or revoke the Government Order dated December 18, 2015 as in annexure W.

(b) An order by declaring that the enquiry report dated June 16, 2014 as in annexure Q as bad in law and based on no records.

(c) An order by declaring that the enquiry officer did not act in an independent manner.

(d) An order by declaring that the entire disciplinary proceedings as bad in law.

(e) An order directing the respondent authorities to promote the applicant with effect and with actual benefit from December 2013.

(f) An order directing the respondent authorities to pay arrears dues of Rs. 1.2 Lakh (Rupees One Lakh Twenty Thousand only) approximately calculated up to December 2015 along with accrued interest.

(g) And/or to pass any such other order(s) and/or direction(s) as this Hon'ble Tribunal may deem fit and proper.

2. As per the applicant, while he was working as Deputy Commissioner of Sales Tax, Salt Lake in the year 2011, he had to deal with 700 files of department to discharge his quasi judicial functions i.e. hearings and assessments under the West Bengal Value Added Tax Act, 2003. According to the applicant, with a view to maximize the revenue

collection of the State and in discharge of his duties, he prepared list of registered dealers under his jurisdiction, whose return filings had infirmities and that attracted provisions of assessment for the year 2009-10 under the WBVAT Act, 2003. During discharge of his duties, it was noticed by him that one particular registered dealer namely M/s Matri Iron Stores had not filed return for the quarter ending September, 2009. Apart from that the applicant was also satisfied from the note of the auditor in its statutory disclosure that some tax evasion had taken place by way of accounting manipulation etc. Accordingly, in terms of the provisions of WBVAT Act, 2003, the applicant issued notice under Section 46 of the said Act calling upon the said M/s Matri Iron Stores to produce books of accounts and other relevant records (Annexure-A).

Although no one appear on the first day of hearing, the said registered dealer was represented by the Learned Advocate for the next date of hearing on 05-06-2012(Annexure-B). During the course of the hearing, the said Learned Advocate produces proof of receipt of filing returns and from the said documents, it appears that the return was filed in the Central Return Receiving Unit. However, the same was not transmitted to the office of the applicant at Salt Lake charge office and therefore was not appearing in the file of the applicant's office. It is further stated that in 2009, online submission of returns was not in vogue and returns were submitted manually. Accordingly, the copy of the return submitted by the Learned Advocate on the date of hearing was accepted by the office of the applicant and kept in records. The applicant being satisfied that returns were submitted and also recorded the same. However he pointed out certain discrepancies relating to the accounts of purchase and requested the Learned Advocate to reconcile the same and produce relevant records. On the next date of hearing i.e. 12-06-2012, the Learned Advocate appeared and produced a statement of reconciliation of statement accepting the discrepancies relating to the accounts of purchase. The applicant accepted the same and reserved the order of assessment in the said case. On 25-06-2012, the applicant passed an order of assessment assessing the dues of the

said dealer at Rs. 21,173 and directed issuance of demand notice (Annexure-C).

Subsequently the order passed by the applicant was confirmed by the Senior Joint Commissioner, 24-Parganas Circle, Salt Lake, being the Appellate Authority on 22-01-2014 (Annexure-D).

3. However, in the mean time the applicant received a Show Cause Notice dated 11-04-2013 alleging that the applicant without application of mind and in violation of policy and directives of the department, had initiated assessment proceeding against the said dealer namely M/s Matri Iron Stores on the basis of a complaint lodge by the Learned Advocate Mr. P. S. Bhattacharjee, who is not the person aggrieved by the order passed by the applicant (Annexure-E). Thereafter the applicant vide his letter dated 25-04-2013 replied to the said Show Cause Notice, denying charges framed against him (Annexure-G). Subsequently after one year, the applicant was served with a Charge Sheet dated 20-03-2014 without supplying relied upon documents. Thus the applicant vide his letter dated 02-04-2014, had demanded the relied upon documents (Annexure-I) and thereafter he was served with relied upon documents on 07-04-2014. The applicant submitted his reply on 22-04-2014 (Annexure-K). In the mean time, on 27-10-2014, the applicant was transferred to Cooch Behar and the promotion of the applicant was being stalled due to the pendency of such disciplinary proceeding as the promotion of the applicant was due on December, 2013 itself. Therefore the applicant made a representation on 28-05-2015 to know the fate of the proceeding and also prayed for promotion of next higher scale. In the mean time suddenly on 13-08-2015, the applicant received a copy of Corrigendum by which the proposed punishment was reviewed proposing withholding of 2(two) successive increments without cumulative effect (Annexure-U).

4. He was served with a second Show Cause Notice on 03-12-2014 and ultimately vide order dated 18-12-2015, the applicant was awarded with punishment of withholding of 2(two) successive increments and was

debarred from promotion for such period of punishment. However the applicant received the said order only on 13-01-2016 (Annexure-W). Being aggrieved with, he has filed the instant application.

5. It has been submitted by the applicant that the Disciplinary Authority acted in a pre-judged mind and the charges does not constitute misconduct as per Rules specially while the applicant was discharging his duties in a quasi judicial capacity. Even the Appellate Authority, while confirming the order of the applicant had endorsed the said order as "justified and well reasoned assessment order". Therefore the entire proceeding is bad in law due to non-application of mind even the revisional application filed by the said assesse was settled by them by payment of the admitted tax and thereby admitting the evasion of tax, as per the order of the applicant. Thus the entire charges have become nonest.

6. The respondents have filed their reply and has submitted that the applicant initiated an assessment proceeding against the said M/s Matri Iron Stores on the flimsy ground of non-submission of return and had failed to monitor the return filing of the dealer neither had he asked the dealer to file final copy of the return before initiation of such show cause notice. The applicant has also violated the departmental circular and the provisions of WBVAT Act, 2003.

7. The applicant has filed his rejoinder wherein it has been specifically denied that the assessment was initiated on flimsy ground as alleged since the assessment of the said assesse was not only for non-submission of return but also on the ground of discrepancies found in their statement of accounts. It has been categorically submitted that no trade or departmental circular have been violated as alleged. In fact the departmental circular no. 773 and 780 provides for exceptions to deemed assessment in as much as order passed by the applicant was confirmed by the Appellate Authority. Further the departmental circulars cannot override statutory provisions whereby assessing officer may assess if there was discrepancy in the account submitted. In the instant case, auditor of the dealer himself noted

discrepancies in their accounts. Thus, the State respondents had pick and choose the circulars only to harass the applicant. It is further submitted that the tax evasion was noticed by the applicant thus it was his duty to recover the same irrespective of its quantum. Even wrong assessment cannot constitute misconduct which is appealable. Therefore the punishment imposed by the respondent is liable to be quashed. In support of his contentions, the applicant has referred the following Judgements :-

i) **2007 (4) SCC 247**

Ramesh Chandra Singh

-Vs-

High Court of Allahabad & Others.

ii) **1997 (6) SCC 169**

Arabind Dattatraya Drhande

-Vs-

State of Maharashtra & Others.

iii) **1971 (1) SCC 697**

Assistant Collector of Custom

-Vs-

CharandasMalhotra

iv) **2001 (6) SCC 491**

P. C. Joshi

-Vs-

The State of U.P. & Others.

8. We have heard the parties and perused the records as well as documents and judgements placed by both the parties. Before dealing with the different judicial pronouncement, let us appreciate the fact of the case

first. It is noted that the applicant while working as Deputy Commissioner of Sales Tax, Salt Lake, was charge sheeted on the basis of a complaint filed by one lawyer, who was conducting cases before him on behalf of his client. The main complaint of the said Learned Advocate was that the applicant ignoring the Departmental Circular had passed the order which caused harassment to him and his client. On the basis of such complaint dated 18-01-2013(Annexure-F) made by the Learned Advocate for the concerned dealer, the applicant was charge sheeted basically on 3(three) charges which are as follows :-

i) **The applicant had initiated and completed the assessment on 25-06-2012 on the flimsy ground for non-submission of return by totally disregarding the instruction of Trade Circulars.**

ii) **The applicant had violated the objects of Status of VAT Laws and instead the assessing officer/applicant should have utilized his energy to the cases involving major deviation.**

iii) **The applicant did not dispatch Demand Notice along with the assessment order by which he fail to ensure timely delivery of the Demand Notice.**

From the perusal of the charge sheet as well as the disciplinary proceeding, it is noted that admittedly the applicant was conducting assessment as a quasi-judicial authority. However there is neither any charge with regard to his integrity and of malafide nor any other ulterior motive. It is further observed that the assessment order of the applicant dated 25-06-2012 was further affirmed by the Appellate Authority vide appellate order dated 22-11-2014 (Annexure-D), wherein it has been held inter alia :-

"**Ld. Authorised Advocate's contention in respect of levy of interest is also not found acceptable due to the fact that Ld. Assessing Officer has rightly levied interest on reversal of ITC and for late payment of admitted tax.**

Thus under the fact and circumstances I do not find any reason to interfere in such a justified and well reasoned assessment order passed by Ld. Assessing Authority. As a result the assessment order passed by Ld. DCST/ST charge is hereby confirmed.

Ld. Assessing Officer is directed to realize the assessed dues along with accrued interest".

Hon'ble Apex Court in the case of P. C. Joshi (supra), while considering the case of Union of India Vs. A.N. Sexana reported in 1992 3 SCC 124, has held that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceeding against the judicial officer. In the instant case, though as per the allegation of the respondent, the applicant did not properly followed the departmental circulars while making assessment of the concerned dealer but surprisingly the State respondent as an Appellate Authority capacity had confirmed the assessment of the applicant. Even the concerned dealer had deposited the said amount of assessment without preferring any further appeal.

09. Therefore in our considered opinion, the basis of initiation for the disciplinary proceeding does not found any foot to stand. It is further noted that the Enquiry Officer even did not found any other materials, which would adversely reflect on his reputation for integrity or good faith or that he has been actuated on any ulterior/corrupt motive. At the best, it may be said that the view taken by the applicant was not proper or correct but not attribute any motive to him, which is found to be extraneous consideration to act him in that manner. Since the applicant had acted as a quasi-judicial authority and in such capacity, he has every right to make assessment, which is appellable also. Therefore, if, any case the order of the applicant is found to be faulty that can be rectified by taking proper legal action by the assesse by filing appeal. In that background, only on the basis of a complaint filed by the Advocate of the concerned dealer, the respondent had initiated disciplinary

proceeding. On the contrary, the said assessment was affirmed by the Appellate Authority, which shows total non-application of mind of the Disciplinary Authority as he has simply endorsed the findings of the Enquiry Authority without considering the final outcome of the said alleged assessment and thus imposed the punishment. Therefore we have no alternative but to quash the charge sheet dated 20-03-2014 and the Disciplinary Authority's order dated 18-12-2015. The respondents are further directed to extend the consequential benefit within a period of 6(six) weeks from the date of receipt of this order.

10. Accordingly, the OA is disposed of with the above observations and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)