

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.379 OF 2022**

**DISTRICT: MUMBAI  
SUBJECT: MINOR PUNISHMENT**

Shri Ashok Shriram Jaiswal, )  
Aged : about 56 years, working as Deputy )  
Commissioner of State Tax, Internal Audit )  
Branch, G-3, 8th floor, GST Bhavan, Mazgaon, )  
Mumbai 400 010 )  
R/o. A-601, Silver Leaf C.H.S. Akruli Road, )  
Kandiwali (E), Mumbai, )... **Applicant**

**Versus**

- 1) Special Commissioner of Sales Tax, )  
M.S. Mumbai, Goods & Tax Bhavan, )  
3rd floor, H.V. Marg, Mazgaon, )  
Mumbai 400 010 )
- 2) Government of Maharashtra, )  
Through Principal Secretary, )  
Finance Department, Mantralaya, )  
Mumbai 400 032 )
- 3) Maharashtra Public Service Commission )  
Through its Secretary, having its office at )  
MTNL, Building, Cooperage, Mumbai. )...**Respondents**

**Shri Makarand D. Lonkar, learned Advocate for the Applicant.**

**Smt. Archana B. Kologi, learned Presenting Officer holding for  
Ms. Swati P. Manchekar, learned Chief Presenting Officer for the  
Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)**

**DATE : 23.09.2022.**

### **JUDGMENT**

1. The Applicant has challenged impugned order of punishment imposed by disciplinary authority dated 22.08.2019 whereby one increment for two years without cumulative effect was imposed and also challenged order of appellate authority dated 29.03.2022 whereby punishment was modified of withdrawing of next increment for one year without cumulative effect.

2. Shortly stated facts are as under:-

The Applicant was working as Deputy Commissioner of State Tax G.S.T. Bhavan, Mazgaon, Mumbai. Respondent No.1 – Special Commissioner, Sales Tax is disciplinary authority. On 15.10.2018 disciplinary authority issued chargesheet under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 for imposing minor penalty attributing negligence in the matter of assessment of Tax done by the Applicant in case of M/s. Lemur Wines and M/s. Damian. The Applicant while working as Assistant Commissioner of Sales Tax, did assessment of the Transaction of M/s. Lemur Wines and M/s. Damian for the financial year 1998-1999. He accordingly passed assessment order under Section 33 (3) of Maharashtra Sales Tax Act 1959. However, later in 2009 Comptroller and Auditor General (CAG) in its Audit done in 2001 found the assessment made by the Applicant in respect of M/s. Lemur Wines and M/s. Damian was in correct. Accordingly, Tax was reassessed and the Traders namely M/s. Lemur Wines and M/s. Damian have paid Additional Tax of Rs.1,00,018/- (Rupees One Lakh Eighteen Only) & 7,63,052/- (Rupees Seven Lakhs Sixty Three Thousand and Fifty Two Only) respectively. The Disciplinary authority therefore issued chargesheet under Rule 10 of M.C.S. (Discipline & Appeal) Rules, 1979 for negligence in duty. The Applicant submitted reply on 07.12.2018. Again disciplinary authority issued Show Cause Notice dated 29.05.2019 as to why punishment of withdrawing of one increment for one year should not be imposed. The Applicant submitted his reply to the Show Cause Notice on 20.06.2019.

However, disciplinary authority did not accept the explanation and imposed punishment of withdrawing of increment for two years without cumulative effect. By order dated 22.08.2019 in appeal it was modified into punishment of withdrawing of increment for one year without cumulative effect by order dated 29.03.2022.

3. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. Archana B.K., learned Presenting Officer holding for Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

4. Needles to mention here the scope of interference by the Tribunal in the matter of punishment imposed under D.E. is very limited and the sufficiency of the evidence laid before disciplinary authority cannot be reassessed by the Tribunal as a appellate authority. It is only in a case where there is breach of natural justice, punishment is imposed without evidence or punishment is shockingly disproportionate in such situation only interference by the Tribunal is warranted as held by Hon'ble Supreme Court in **(2015) 2 SCC 610 (Union of India Vs. P. Gunasekaran)** in which Hon'ble Supreme Court held that High Court or tribunal cannot act as a second Court of Appeal and adequacy as well as reliability of evidence cannot be looked into in judicial review. Interference is permitted only when the finding of fact is perverse. Having heard the submission of learned Advocate for the Applicant and on perusal of record, I have no hesitation to hold that the present case does not fall within the parameter laid down by Hon'ble Supreme Court in **P. Gunasekaran's case (cited supra)** and it would be evident from further discussion.

5. Shri M.D. Lonkar, learned Advocate for the Applicant initially sought to contend that there was no negligence on the part of the Applicant while carrying assessment of the transaction of the Traders. During the course of hearing it was pointed out to him that the Applicant in his reply indeed admitted his mistake stating that it

happened inadvertently. Realizing this, learned Advocate for the Applicant therefore raised 2<sup>nd</sup> ground that though alleged negligence was of the year 1998-1999, chargesheet for minor punishment was issued belatedly in the year 2018 and on the ground of delay punishment is vitiated.

6. As regard, negligence in assessment of the Tax return of M/s. Lemur Wines and M/s. Damian, the record clearly established that the assessment done by the Applicant was wrong and having noticed it, reassessment was done and additional Tax with penalty amount of Rs.1,00,018/- (Rupees One Lakh Eighteen Only) & 7,63,052/- (Rupees Seven Lakhs Sixty Three Thousand and Fifty Two Only) respectively was recovered from the Traders. It is thus obvious that there was negligence on the part of the Applicant to assess the Transaction correctly. Had CAG of Sales Tax, Reassess Audit Department had not raised objection, Government would have suffered loss of Rs.1,00,018/- (Rupees One Lakh Eighteen Only) & 7,63,052/- (Rupees Seven Lakhs Sixty Three Thousand and Fifty Two Only) respectively. Suffice to say it cannot be termed the case of no evidence as tried to contend.

7. Indeed, there is clear admission of the Applicant in is reply dated 07.12.2018 that mistake happened while assessing the Tax of the Traders. Suffice to say, the finding recorded by disciplinary authority holding the Applicant guilty for negligence in assessment of Tax of the Traders is correct and need no interference.

8. As regard, delay of initiation of D.E., true there is inordinate delay on the part of disciplinary authority for initiating disciplinary proceeding. There is no straight jacket formula as to when delay in initiation of D.E. vitiate D.E. The Tribunal is required to decide the case on the facts and circumstances of the case to find out whether delay itself is enough to initiate D.E. or punishment imposed in D.E. In present case admittedly the Applicant has not challenged initiation of D.E. by availing legal

remedy. He participated in the enquiry in which he was subjected to the punishment. As such, now D.E. is already completed and finding of holding the Applicant guilty is upheld by appellate authority. The negligence attributed to the Applicant, pertains to monetary loss of the Government which comes to near about of Rs. 9,00,000/- (Rupees Nine Lakhs Only). As such, considering the gravity of the charges established against the Applicant delay in initiation of D.E. in my considered opinion cannot be the ground to quash the punishment.

9. Totality of the aforesaid discussion leads me to sum up that challenge to the punishment holds no water and O.A. is liable to be dismissed. Hence, the order.

**ORDER**

The Original Application is dismissed with no order to be costs.

**Sd/-  
(A.P. Kurhekar)  
Member (J)**

Place: Mumbai  
Date: 23.09.2022  
Dictation taken by: N.M. Naik.

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