THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 598 OF 2015

DISTRICT :PUNE

Shri Lalbahadur Ramchandra Katare)
Deputy Commissioner, Sales Tax)
G-22, Konark Splendor,)
Vadgaon Sheri,)
Pune 411 014.)...**Applicant**

VERSUS

The Additional Chief Secretary)
Finance Department,)
Government of Maharashtra,)
Mantralaya, Madam Kama Road,)
Hutatma Rajguru Circle,)
Mumbai 400 032.)....**Respondent**

Shri D.B. Khaire, learned Advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 3.02.2016.

ORDER

1. Heard Shri D.B. Khaire, learned Advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondent.

2. This O.A. has been filed by the Applicant challenging the order dated 8.7.2015 placing him under suspension.

3. The Applicant has challenged his suspension order mainly on the following grounds, viz.

(i) There is nothing on record to suggest that he is guilty of any misconduct. In fact, he had acted strictly as per law.

(ii) The incidents, regarding which the Applicant is alleged to have acted against the law and rules, took place in 2009-2012, and there was no need to place him unddr suspension now. The enquiry, if any, could have been conducted as the Applicant was not in a position to interfere or obstruct any witnesses. In fact the whole case against him is based on documentary evidence.

4. Later the Applicant also pleaded that he had made a representation against the suspension, and as no charge sheet is yet issued to him, he is eligible to be reinstated in terms of G.R. dated 14.10.2011.

5. It is the case of the Respondent that the Applicant has acted in way, which has caused huge losses of revenue to the Government by refunding Sales Tax to parties, against the law and rules to favour those parties.

6. Learned Chief Presenting Officer (C.P.O.) raised a preliminary objection that this O.A. has been filed by the Applicant without exhausting the remedy of an appeal, which is available under rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Learned C.P.O. relied on the judgement of this Tribunal dated 28.7.2015 in O.A.No.200 of 2015 and judgement dated 15.9.2010 in O.A.No.419 of 2010. Learned Counsel for the Applicant, however, contended that this matter has been decided by Hon'ble Bombay High Court in the case of ***State of Maharashtra & Others Vs. S.S. Sadavarte reported in (2001) 1 LLJ 1198 Bombay***. Learned Counsel for the Applicant stated that Hon'ble High Court has held that a suspended Government employee can either file an appeal against the order of suspension or approach the competent authority by invoking the provision of Rule 4(5) of the M.C.S. (Discipline and Appeal) Rules. The order of the competent authority is subject to judicial review. Challenge to the order of suspension should not be ordinarily entertained by the Tribunal/ Court, unless the remedy as provided under Rule 4(5) is exhausted by the delinquent employee. However, if the representation filed by the delinquent employee under Rule 4(5) is not decided within a period of two to three months or if the same is rejected, the employee has the right

to appr ach the Tribunal. Learned Counsel for the Applicant argued that the order of suspension was passed on 8.7.2015. The Applicant had filed a representation on 19.8.2015, which was not decided in 2-3 months, as is mandated by Hon'ble High Court in Sadavarte's case (supra). The representation is not yet decided, and therefore, the O.A. is maintainable.

7. Learned C.P.O. argued that the Applicant had not waited before his representation dated 19.8.2015 was decided. The said representation was placed before the Review Committee in its meeting held on 15.1.2016 and the decision is awaited. I find that the Applicant has admittedly filed a representation against his suspension on 19.8.2015. The same is pending. It can be said that the present O.A. is maintainable.

8. Hon'ble Bombay High Court in the State of Maharashtra Vs. Shri Raghunath Elenath Munde in W.P.No.6313 of 2015 by judgement dated 30.7.2015 has made the following important observtions:-

(i) In the normal course, it is the disciplinary authority who is the best judge as to whether the person should be continued in suspension or not. If the delinquent is suspended, it is open to the disciplinary authority to review the order of suspension. In that context, the court can only exercise its powers of interference in a limited number of cases, where it is show that the decision to suspend is arbitrary, and or is a

malafied exercise of power and/or colourable exercise of power and/or the State or the authorities are not able to explain the reasons for suspension, when it is for a unduly long period and adequate reasons are not forthcoming for the order of suspension.

(ii) These must be parameters on which every authority including M.A.T. must consider while dealing with an order of suspension more so in the cases of delinquent employee who hold the sensitive posts under Police Services and such other services. It is not for the courts including the Tribunal to interfere with exercise of discretion by the disciplinary authority otherwise then in circumstances set out.

(iii) We are coming across large number of matters, where the tribunal is interferring with the orders of suspension issued by the disciplinary authority merely on the ground that the charge sheet has not been issued and/or that some time has elapsed from the date of suspension. We must empress own unhappiness with the approach of the Tribunal in such matters. We also fail to understand as to why disciplinary authority does not proceed to issue charge-sheet and commence the process for the domestic enquiry.

9. The facts in the present O.A. are examined in the light of the above mentioned observations of Hon'ble High

Court. The Applicant claims he has been placed under suspension due to actions taken by him when he was working as a Deputy Commissione (Refund Audit)- V.A.T.) Pune during the period of 2009-2012. Though the impugned order of suspension does not mention the reasons, from the affidavit in reply dated 15.10.2015 it appears that the Applicant has been placed under suspension on the basis of report of the Chief Vigilance Officer (C.V.O.) dated 30.4.2015, submitted to the Sales Tax Commissioner, Maharashtra State, Mumbai. The copy of the said report is at Exhibit 'R-1' on page 125 of the paper book. A committee was appointed to inspect the office of the Deputy Commissioner of Sales Tax (Refund Audit – VAT 19/20) when the Applicant was holding that post from 1.4.2009 to 25.6.2012. From the file notings of the Respondents at Exhibit 'B', it is seen that the committee discussed 17 points and found that the Applicant was at fault. All of them have been discussed in the aforesaid note. The findings of the enquiry committee are summarised as below:-

(1) M/s B.T. Patil and Sons, Belgaum (TIN No.27870601015V), M/s Mahalakshmi Infra Projects Ltd. (TIN No.27840000941V) and M/s Mahalakshmi B.T. Patil Joint Venture (TIN No.27390393893V) were given refunds by the Applicant against Bank guarantees.

(2) While submitting quarterly returns (विवरण पत्र) M/s B.T. Patil didnot seek any refund for 2005-2006. However, the said dealer filed revised returns and

claimed Tax refund later. The dealer submitted revised returns for the period from 1.4.2006 to 31.3.2009 and sought refunds. All revised returns were filed during the period of October-November 2009.

(3) M/s B.T. Patil filed original returns for the year 2005-2006 in July 2007 and did not claim any refund. The dealer filed revised return in 2009 and sought refund of Rs.4,24,881/-. This revised return was filed 1 ½ years after due date. That time the dealer should have filed audited accounts with accounts book. The fact that revised return was filed in November, 2009 was suspicious.

(4) After the V.A.T. was introduced in Maharashtra from 2005-2006, for the goods purchased and which were in stock on 31.5.2005, some conditions were set by the department for claiming set-off. The returns about the goods in stock was required to be filed on or before 15.9.2005. The dealer didnot do so and still this fact was not ascertained by the Applicant while sanctioning refund to M/s B.T. Patil.

(5) M/s B.T. Patil was registered under Works Contract Tax Act before 1.1.2006. Deduction of Works Contract Tax is not admissible in all cases. While sanctioning refund, the Applicant didnot ascertain whether refund was admissible under Rule 53 & 54.

(6) M/s B.T. Patil had in the return of 1.11.2005 to 30.11.2005 shown Rs.2,84,99,659/- as 'carried forward' but for 1.12.2005 to 31.12.2005, the 'brought forward' amount is shown as Rs.5,27,95,72/-. Actually it should have been the same. This fact should have required verification by the Applicant while sanctioning refund.

(7) One Shri M.V. More has signed Return for 2006-2007 on behalf of M/s B.T. Patil. Shri More was not authorised representative. The Return was, according, not valid.

(8) For the year 2006-2007, the dealer filed revised return on 27.11.2009 and also filed refund application. The Bank quarantee was taken on 28.10.2009. The Bank guarantee was taken before from the Bank and submitted to the Applicant, before the application for refund was filed. This appears suspicious.

(9) A dealer is required to give information in appendices (a) to (d) with form no.501 for seeking refund. The Applicant sanctioned refund, without any details being filed in these appendices.

(10) It is mandatory to ascertain whether refund is due before orders are passed under Section 51 of the V.A.T. Act. However, the Applicant sanctioned refunds without appendices being filled. It is not

clear on what basis certain refunds were sactioned, while others were rejected.

(11) The Applicant didnot keep returns for the years 2005-2006 and 2006-2007 in the file sanctioning refund for those years. He didnot make any scrutiny in the matter.

(12) On scrutinising original and revised returns, it appears that returns were not as per law. It was, therefore, necessary to hold that the returns were bad in law. However, the Applicant didnot do so and on the basis of revised returns filed after the due date, sanctioned refunds.

(13) In the case of M/s Mahalaxmi B.T. Patil, Joint Venture, for the year 2007-2008, the dealer has submitted forms 407/408. Both the forms are signed by one Shri M.V. More. Without ascertaining whether the forms were correct, refunds were given in the year 2007-2008 and 2009-2010 by the Applicant.

(14) As per Circular no.56-7/2007, if the returns are filed as per the VAT Tax Act and rules, only then refund should be given. It was necessary for the Applicant to ascertain that returns are faultless, complete and submitted in time, before sanctioning refund, even if the dealer had submitted Bank guarantee. The Applicant didnot

follow the above Circular and sanctioned refunds in haste.

(15) Before sanctioining refund under Section 51(5) of the VAT Act, it is necessary to find out whether the firm is eligible for refund. This was neglected by the Applicant.

(16) As per circular no.6(A) 2008, if a dealer has submitted original returns and form no.501, and for the same period, if he has filed revised returns, then, original form no.501 should be cancelled and revised for 501 is required. If there are no discrepencies between original and revised returns, only then the dealer is eligible for refund. In the present case, the dealer submitted repeated returns for the same period and there were different refund claimed in each return. As such, it was necessary to ascertain correct amount of refund, before sanctioning the same.

(17) In addition to above irregularities, the Applicant has committed serious irregularities in other cases of refund.

10. The Applicant's claim that he is innocent is based on Section 51(5) of the Valud Added Tax Act, which reads:-

"1[5] Notwithstanding anything contained in this section, if the dealer has furnished a bank gurarantee for such amount, from such bank, for such period and to such authority as may be prescribed, the

Commissioner shall grant the refund due under sub-section (2) or (3), within one month of the furnishing of the bank guarantee, irrespective of whether the additional information has been furnished or not.]

(6) (a) If before the grant of refund under this section, a notice for assessment covering the period to which the return relates is issued or if any proceedings under sub-section (3) or sub-section (4) of section 64 are initiated in respect of the period to which the return relates, then,-

(i) If the dealer has not furnished a bank guarantee then no refund under this section shall be granted; and

(ii) If the dealer has furnished a bank guarantee then an amount equal to the guarantee amount shall be refunded.

(b) If it is found as a result of any order passed under this Act that the refund granted under this section is in excess of the refund, if any, determined as per the said order, then the excess amount shall be recovered as if it is an amount of tax due from the dealer and the dealer shall be liable to pay simple interest at the prescribed rate per month or part thereof from the date of the grant of refund.

(7) No refund under this section shall be granted unless an application as provided is made and no application under this section shall be entertained unless it is made within [eighteen months] from the end

of the year containing the period to which the return relates.]"

Learned Counsel for the Applicant argued that this section does not require the authority sanctioning refund to ascertain whether the information submitted by a dealer is correct or not. Only on furnishing the required Bank Guarantee, refund is required to be granted. In case, there is some excess refund sanctioned, it can be recovered later along with interest as per Section 51(6) (b). Learned Counsel for the Applicant contended that by his action, no loss was caused to the Government, nor did dealer drive any benefit. Learned Counsel for the Applicant stated that refund against the Bank guarantee is temporary in nature, subject to final assessment and during final assessment, if it is found that excess refund is granted, the same is recovered along with interest at a rate which is more than the rate of interest charged by the banks. The Applicant had passed assessment ordes after verification of books of Accounts and determined excess amount of refund which has been recovered. There has been no loss to the Government. Learned Cousel for the Applicant stated that the dealer has himself admitted that he claimed excess refund on the wrong advice given by his consultant. Lerned Counsel for the Applicant argued that the law itself envisages that there is possibility of inflated /wrong claim, but Section 51(6) (a) allows grant of refund against Bank guarantee even in case where there is reason to believe that the dealer has evaded tax or is attempting to evade tax.

11. Learned Counsel for the Applicant stated that there is no provision in MVAT Act, barring filing of return after due date. A dealer is authorised under Section 20 to file revised returns. There is no bar on filing more than one revised returns. Learned Counsel for the Applicant stated that under circular 6A 2010, the Applicant is not liable to disciplinary action except under certain eventualities as he is a quasi-judicial authority. It can be done on receipt of report from Sales Tax Tribunal or if the Commissioner has to reason to believe that an authority has made under assessment, he cannot be proceeded departmentallly.

12. The claims and counter claims of the Applicant and the Respondent have been summarrised above with a view to ascertain whether it is a fit case for interference by this Tribunal. It is to be seen whether the action of the Respondent can be called arbitrary, or of exercise of power malafide or colourable exercise of power. In the present case, the case against the Applicant as discussed hereinabove is that he granted refunds against bank guarantee, though there were numerable discrepencies in the claims of the dealer as enumerated above. Some of the ground mentioned are, repeated revised returns filed by the dealers, huge discrepencies in the refund claims in various returns, revised returns for the period from 2005-2006 being filed during October/November 2009 and also claiming refunds without information being furnished in the appendices to application forms for refunds etc. It appers that the claim of the Applicant is maintly that he was legally bound to grant

refunds, without verifying any details, only on production of bank guarantee. This defence appears to be a bit extreme. If from the ordinary scrutiny of documents, huge discrepencies are found, a refund authority definite has a right to seek clarifications. No action of a quasi-judicial authority can be so mechanical. The Commissioner of Sales Tax had issued certain circulars, as to how to deal with such cases of refund. The Applicant is accused that he didnot follow Commissioner's instructions. Whether this allegation is correct, can only be determined in an inquiry. The Applicant's claim that excess refund was later recovered with interest, will not absolve him, if he has in fact, violated provision of any law, rules/circulars etc. Government is not a bank to give advance to dealers.

13. The Applicant has himself conceded that as per MVAT Act, Commissioner of Sales Tax has powers to initiate disciplinary action against an officer, if he has reason to believe that he has under assessed. The chareges against the Applicant appear to be covered under the said provision. From the material on record, I am unable to conclude that the order of the Respondent is arbitrary. There is nothing on record that the Respondent has exercised his powers malafide or in a colourable manner. There does not appear to be any justification for judicial interference with the impugned order.

14. Learned Counsel for the Applicant has relied on a large number of judgement of Hon'ble S.C., Hon'ble H.C. to

show that the suspension of the Applicant is bad in law. Some of the judgements are discussed below.

(i) State Orissa Vs. Bimal Kumar Mahanty:(1994) 4 SCC 126:-

It has been held in para 13 of the judgement that the order of suspension should passed after taking into consideration the gravity of misconduct, the nature of evidence and an application of mind by the appointing authority. In my considered view, the charges against the Applicant nature of evidence is such, that impugned order cannot be questioned on those counts. There is elaborate discussion of the alleged misconduct of the Applicant, before the Respondent had decided to pass the impugned order. It is not a case of non-application of mind.

(ii) State of Maharashtra Vs. Dr. S.D. Mane in W.P.No.9660 of 2014:-

It is seen that the order of this Tribunal revoking suspension of Shri Mane was challenged before Hon'ble High Court. Shri Mane was transferred repeatedly and all orders were stayed by this Tribunal. None of orders of this Tribunal were challenged before Hon'ble H.C. The State then placed Shri Mane under suspension, a few months before retirement. This Tribunal revoked suspension order, which was issued apparently in colourable exercise of powers. Hon'ble High Court upheld the order of this Tribunal. Facts are quite different in the present case. There is no evidence of malafide or colourable excercise of powers in the present case.

(iii) O.A.No.357 to 363 of 2015, judgement dated 1.6.2015.

In this case, the suspension orders of Applicants, who were Tahsildars were revoked as there were clear reports from Collector and Commissioner, Nasik that the Applicants were in no way connected with the allegations made against them. This case is clearly distinguishable.

(iv) Z.B. Nagarkar Vs. Union of India:(1997) 7 SCC 409.

Hon'ble S.C. has held that failure to exercise quasi-judicial power properly itself is not a misconduct because wrong decision is subject to judicial supervision in appeal. To maintain a charge sheet against a quasi-judicial authority, something more i.e. extraneous consideration influencing quasi-judicial order, delibrate act or actuated by malafide has to be alleged. In the present case, charge is that the Applicant tried to held the dealers. This has to be proved in D.E. It proved, this judgement will not be applicable. At this stage, this Tribunal cannot interfere.

(v) C.S. Kesavan Vs. State of Kerala, Kerala H.C. Judgement (1989)1LLJ 404 Kerala.

It has been held that an order passed by a quasi-judicial officer, cannot be the basis of starting disciplinary action, just because the decision is against the Government. Hon'ble High Court has held that quasi-judicial authority must have freedom to take independent decisions in accordance with law. (emphasis supplied). In the present case, the charge against the Applicant is that he didnot act in

accordance with law and rules. This case is clearly distinguishable.

15. Learned C.P.O. has also relied on the various judgements of Hon'ble S.C. & H.C. that this Tribunal should not interfere with the excercise of powers by disciplinary authority in suspension matters, unless the order is held to be arbitrary, or issued in exercise of powers malafide or in colourable manner. It is, therefore, not necessary to discuss them in detail. It is already held that this is not a fit case calling for interference by this Tribunal.

16. Learned C.P.O. has stated that the representation of the Applicant is already considered by the Review Committee in terms of G.R. dated 14.10.2011. The decision of the committee may be communicated to the Applicant within a period of 4 weeks from the date of order, if not already communicated. The Respondent is also directed to start and conclude the D.E. against the Applicant, if he is so minded, expeditiously.

17. This O.A. is dismissed with no order as to costs.

(RAJIV AGARWAL)
VICE-CHAIRMAN

Date : 03.02.2016
Place : Mumbai
Dictation taken by : SBA
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