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IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-16801-2018 (O&M).
Date of Decision: 26.03.2025.

ASHOK SUKHIJA

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Abhilaksh Grover, Advocate,
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the order dated 09.05.2018 whereby the respondents No.1 and 2 have imposed penalty on the petitioner for recovery of Rs.43,24,612/- and also imposed a cut of 1/3rd pension.

2 Learned counsel appearing for the petitioner contends that the petitioner was appointed as a Taxation Inspector in the respondent Department on 04.09.1990; to the post of Assistant Excise and Taxation Officer in the year 2004 and eventually to the post of Excise and Taxation Officer vide order dated 19.06.2013 and was posted at Sirsa where he joined

on 02.07.2013. He contends that the petitioner was served with a chargesheet by the respondent authorities on the ground that the petitioner has caused a loss of Rs.6,24,81,552/- to the State Exchequer in connivance with the then Deputy Excise and Taxation Officer, Sirsa by issuing the refunds without seeking any verification of payment. A regular Departmental Inquiry was conducted into the matter and as per the report submitted by the Inquiry Officer, no revenue loss could be ascertained. He contends that notwithstanding the Inquiry report, the respondent authorities have directed recovery of the aforesaid amount of Rs.43,24,612/- from the petitioner. He contends that no findings have been returned by the Inquiry Officer regarding quantification of the loss and hence, there is no basis for imposition of the aforesaid penalty.

3 Learned State counsel, on the other hand, refers to the averments contained in the written statement and submits that the one Vinod Kumar had submitted a complaint to the Excise and Taxation Minister regarding tax evasion of crores of rupees being carried out by registering bogus and fake firms and allowing them to claim input tax credits. A preliminary inquiry was conducted and a report was accordingly submitted by Sh.Ashok Sharma, the then Additional Excise and Taxation Commissioner, Passenger and Goods Tax (PGT), as per which there were huge amount of input tax credit that had been issued to the tune of Rs.6.24 crores approximately and the same had been allowed by the petitioner during the period from 01.11.2013 to 31.01.2014, in connivance with the then DETC. She contends that since the

Inquiry Officer had proved the charges against the petitioner, a second show cause notice was issued on 28.10.2016.

4 Reply was filed by the petitioner and thereafter he was also granted an opportunity of hearing and finally the punishment has been imposed by following the due process of law. He submits that there is no breach in the procedure.

5 No other arguments have been raised by the counsel for the parties and no judgment or case law has been cited.

6 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition with their able assistance.

7 The Inquiry report furnished by the Inquiry Officer has also been perused by this Court. The relevant extract of Inquiry report reads thus: -

> *"From the above material on record there is no escape from the conclusion that while recommending the refunds in the aforesaid cases, instructions dated 16.05.2013 were not followed and no verification from the Treasury for the deposit of input tax was obtained. No amount of urgency can outweigh the defiance of directions issued to prevent pilferage of State exchequer.*
>
> *The charge against the delinquent ends with the allegations that he caused a loss of Rs.6,24,81,552/- to the State Exchequer. This is the important part of the charge and this figure has been collected from the list P-3/A, prepared by the Inquiry Officer, Sh. Ashok Sharma. Significantly, in the main finding recorded by Sh. Sharma, it is nowhere written in specific terms that the aforesaid lapses on the part of the delinquent and*

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then the DETC had caused loss to the State exchequer to the above extent. However, the list P-3/A in column No.5, the amount of refund given in each of the 93 cases is described and the total thereof comes to Rs.6,24,81,552/-. This figure cannot be accepted on face value because it is unbelievable that in all the 93 cases not a single paisa was deposited as input tax. Sh. Sharma did not appear in the witness box despite several adjournments and therefore, this point was left for PW-1 to clarify: His statement was recorded on 24.04.2016 and then on 18.06.2016. He also prepared the list, P-1, of these 93 cases. Out of these, he verified the payment of tax in 65 cases and he so mentioned in the last column No.10 of the list. It follows that the tax stood paid in 65 such cases. Therefore, the loss, if any, to the State cannot be Rs.6,24,81,552/-.

The column no.10 in P-1 was left blank in all the remaining 28 cases. The reason being that the files of these 28 cases were with special investigation team (SIT) and audit party. He was given time to collect necessary information and therefore appeared again in evidence on 18.06.2016. In this statement he says that out 28 cases 4 cases bearing serial no.18, 25, 26, 71 were pending final assessment. In thirteen cases at Sr. Nos. 11, 17, 37, 46, 57, 67 to 70, 76, 77, 80 and 81 final assessment stood completed and no demand raised. However, in remaining 11 cases demands have been raised on final assessment but the witness was unable to testify if those demands included the tax liability for the quarter for which the refunds in this case were recommended by the delinquent. The original record of all the refund cases stand sealed and is with the State Vigilance Bureau, Hisar. The lists P-8 and P-8/A pertain to the cases where final assessment has been completed and include the 4 cases pending for final assessment.

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In this peculiar situation while the loss to the State exchequer to the extent of Rs.6,24,81,552/- cannot be upheld and at the same time the exact amount of loss, if any, cannot be quantified in this inquiry. For this, the department needs to assess the amount from the examination of 11 cases where the final assessment stood completed and demand raised, and 4 cases pending final assessment. Not only this, going by the charge-sheet, the amount, so ascertained, has to be apportioned between the delinquent and the then DETC Sh. N.K. Ranga, who ordered the refunds on the recommendation of the former.

The delinquent refers to the decision of the High Court in CWP No.6573 of 2007 Gheru Lal Bal Chand Vs. State of Haryana and another. The controversy in the reported case was with regard to denial of input tax credit by the Assessing Authority on the ground that the dealers from whom the petitioners had purchased the goods did not deposit full tax in the State Treasury and the petitioners were not given the benefit of deduction of input credit in terms of Section 8 of the Act. The Hon'ble High Court ruled that the liability on the purchasing dealer could not be fastened on account of non-payment of tax by the selling dealer in the Treasury, unless it is a case of fraud, collusion or connivance. This observation has no application to the instant departmental inquiry which is confined to the non-compliance of instructions for verification of payment of input tax in the Treasury by the assessing officers recommending / ordering the refund under Section 20 of the Act. In any case, it involves allegations of connivance between the two.

In the result, the charge is proved against the delinquent to the extent indicated above."

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8 The order passed by the Additional Chief Secretary to Government of Haryana, Excise and Taxation Department has also been perused. The operative part thereof reads as under: -

> *"2. Sh. Ashok Sukhija, ETO (Retd.) submitted his reply to charge-sheet vide his letter dated 15.04.2015. The comments of Excise and Taxation Commissioner. Haryana, Panchkula on the reply to chargesheet were sought vide Govt letter dated 23.04.2015. Excise and Taxation Commissioner, Haryana, Panchkula vide their letter dated 28.07.2015 submitted his comments on the reply to the chargesheet submitted by Sh. Ashok Sukhija, ETO (Retd.). Sh.R.P.Bajaj, District and Sessions Judge (Retd.) was appointed as Inquiry Officer for conducting regular departmental enquiry against the Sh. Ashok Sukhlja, ETO (Retd.) vide Govt letter dated 04.12.2015. The Inquiry Officer vide his letter dated 25.06.2016 submitted the enquiry report. Thereafter, a second show cause notice dated 28.10.2016 was issued to the charged officer. Sh. Ashok Sukhija, ETO (Retd.), vide his letter dated 09.12.2016, submitted his reply to the second show cause notice. An opportunity of personal hearing was also granted to the delinquent officer on 02.02.2017.*
>
> *3. Keeping in view the gravity of the charges, the report of the Inquiry Officer, the reply of the charged officer and concurrence/approval of Haryana Public Service Commission, the following penalty is imposed on Sh. Ashok Sukhija, ETO (Retd.):-*
>
> *(i) Cut in pension of one third of the full pension and*
>
> *(ii) Recovery of Rs.43,24,612/-.*
>
> *This issues with the approval of the Competent Authority."*

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9 It is evident from a perusal of the above that the disciplinary authority has imposed the punishment of one third cut in pension and recovery of Rs.43,24,612/-. The Inquiry Officer had submitted its report proving the charge. However, it is also evident from a perusal of the Inquiry report that the Inquiry Officer had specifically returned a finding that no evidence has been led by the respondents to establish the loss that has been so suffered. It was rather recorded by the Inquiry Officer that as per the list of 93 cases in which input tax credit was given, the tax stood paid in as many as 65 cases In the remaining 28 cases, 04 cases were pending final assessment and in 13 cases, even though assessment had been completed, however, no demand was raised. In the balance 11 cases, the witness failed to testify whether the demands had any component of tax liability or not. Hence, there was no evidence to establish existence of any loss. The charge proved, if any, is only at best to the effect that prescribed procedure for tax credit has not been followed. The same cannot be conceived as proving of a charge of financial loss to the State exchequer. The said aspect is thus largely a presumption of a loss. The penalty being for recovery of loss, on establishment of the loss was a pre-requisite for imposing the said punishment. Further, the amount of loss to be ascertained was thereafter to be apportioned between the delinquent (petitioner herein) and the then DETC Sh. N.K. Ranga.

10 It is evident from a perusal of the record that the respondents have failed to answer that how and in what manner, the loss if any, caused to the State exchequer has been quantified and whether any exercise for

determination of the loss and its apportionment was undertaken by the respondents. The order in question also does not take into account either the submissions advanced by the petitioner or even the defence taken by the petitioner. The charge which was returned as proved by the Inquiry Officer was only to the extent that the delinquent failed to follow the instructions dated 16.05.2013 while allowing the input tax credit and no verification had been carried out from the treasury for the deposit of the input tax. The same at best would establish a charge of violation of rules by the Department, however, the same is not determining about the fact of loss that may have been so caused by the acts of omission and commission of the petitioner.

11 The finding thus relied upon by the punishing authority actually do not flow from a reading of the inquiry report leading to a flawed conclusion. When the order of punishment is not based upon correct reading and interpretation of the inquiry report, such an order is amenable for a judicial review by the Constitutional Courts.

12 I thus find that the order under challenge fails to take into consideration the factors indicated above and submissions made by the counsel for the petitioner and reflects no application of mind thereupon. Consequently, the impugned order dated 09.05.2018 is set aside. The matter is remanded to the disciplinary authority to pass a fresh order in accordance with law.

13 Let the above exercise be completed by the respondent expeditiously and preferably within a period of 03 months of the parties appearing before it. The matter is ordered to be put up before the disciplinary

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authority on 29.05.2025. The petitioner may appear in person or through an authorized representative on the said date before the Disciplinary Authority.

14 The petition stands disposed of accordingly.

15 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

March 26, 2025. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No