

BEFORE THE PUBLIC SERVICES TRIBUNAL,  
UTTARAKHAND AT DEHRADUN

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

**CLAIM PETITION NO. 40/2012**

Smt. Sangeeta Vatsal, W/o Sri Alok Kumar Vatsal, R/o R.K. Enclave  
Near Mandi Police Chowki, Mooradabad Road, Kashipur District  
Udham Singh Nagar,

.....Petitioner

Vs.

1. State of Uttarakhand, through Secretary, Trade Tax, Uttarakhand, Dehradun,
2. Principal Secretary, (Finance), State of Uttarakhand, Dehradun,
3. Joint Commissioner, Trade Tax, Kashipur, Udham Singh Nagar,
4. Additional Commissioner, Trade Tax, Kashipur, Udham Singh Nagar,
5. Additional Commissioner (Administration) Trade Tax, Uttarakhand, Dehradun.

.....Respondents

Present: Sri V.P.Sharma, Counsel,  
for the petitioner,

Sri Umesh Dhaundiyal, A.P.O.  
for the respondents

**JUDGMENT**

**DATE: SEPTEMBER 30, 2013**

**DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)**

1. An adverse remark awarded against the petitioner by the Additional Commissioner (Administration) Trade Tax on 17.07.2009 (Annexure-1) is under challenge in this petition.

2. The facts in brief are that the petitioner is Office Assistant in the Trade Tax Department and presently posted in the office of Assistant Commissioner, Trade Tax Division-II, Kashipur, Udham Singh Nagar. Second appeal Trade Tax No. 87/2007 was disposed of by the Uttarakhand Commercial Tax Tribunal on 16.4.2008 and assessment order passed by the Assistant Commissioner was quashed and the case was remanded for disposal afresh. Thereafter, the assessee M/s Anamika Agency, Court Road, Kashipur moved an application for refund of Rs. 26,400/-, deposited by him as tax in compliance of assessment order. On this application, the petitioner submitted a report that M/s Anamika Agency is entitled for refund of the amount deposited by him as tax, but it was revealed later on that assessee M/S Anamika Agency was not entitled for refund of the above mentioned amount as there was no such order by any competent officer. In fact, the amount is refunded by the competent authority and the petitioner is not competent to refund the amount. The report was also prepared on the instructions of the competent authority. The petitioner had also consulted the senior officer before preparing the report and the petitioner is innocent. The intention of the petitioner was clear as the report was prepared on the instructions of the competent authority; therefore, petitioner is not liable for any act. The explanation of the petitioner was called for by the Joint Commissioner vide letter dated 16.01.2009, which was submitted on 20.01.2009, but it was not found satisfactory and an adverse remark was recorded against the petitioner vide impugned order (Annexure-A-1) by the Additional Commissioner. The petitioner preferred departmental appeal which was also rejected by the Commissioner vide order dated 15.09.2009. The petitioner also submitted a review to the Principal Secretary, Finance, which was also rejected vide order dated 6.07.2010. Hence this petition.

3. The petition is opposed on behalf of all the respondents stating that the petitioner is a ledger keeper in the department and it was her duty to submit the report on the application for refund of amount. The petitioner without any order of the competent authority, recommended the refund of Rs. 26,400/-, which amounts to her irresponsible conduct and negligence. The adverse remark has been awarded after considering her explanation. The appeal has also been dismissed. The petitioner is a senior employee of the department and her conduct had been negligent and irresponsible.

4. A Rejoinder affidavit has also been submitted on behalf of the petitioner and a copy of the judgment passed by this Tribunal in the similar matter has also been filed.

5. We have heard both the parties and perused the record carefully.

6. It is admitted to both the parties that the assessment order in compliance of which an amount of Rs. 26,400/- was deposited by the assessee was quashed by the Commercial Tax Tribunal and the matter was remanded back to the Assessment Officer for disposal according to law. It is also admitted that there was no order for refund of the amount of tax. It is further admitted that the report recommending the refund of the amount was prepared by the petitioner. The contention of the petitioner is that this report was prepared under the instructions of the senior officers. She is innocent. Had the amount not been refunded, the aggrieved party would have claimed the interest. Moreover, it was also the responsibility of the concerned officer to peruse the record and only therefore, to pass appropriate orders on the request for refund. As the report has been prepared on the instructions of the senior officers, the petitioner cannot be said to have done any misconduct.

This is denied on behalf of the respondents. We have carefully considered the contention of the petitioner. In case, the report was prepared on the instructions of any senior officer, it was obligatory upon the petitioner to name that senior officer. It is not enough to say that report was prepared on the instance of some senior officer. The petitioner did not name any senior officer upon whose instructions, the report was prepared. In the absence of any name, we are not ready to accept the contention of the petitioner that report was prepared on this instigation or instance of the senior officer. Moreover, there is no evidence on record to substantiate this contention. So, we of the clear view that petitioner failed to make out any case that the report was prepared on the instance of any senior officer. In fact, the petitioner was responsible for submitting the report and she has submitted the report irresponsibly and no benefit can be extended to the petitioner on this ground.

7. It has also been contended that the explanation, appeal and revision of the petitioner was not considered in true perspective, but it does not bear any force. All the orders on the explanation, appeal and revision are speaking and reasoned, so it cannot be said that explanation, appeal or revision have not been considered properly.

8. It has also been contended that the report of the petitioner was endorsed by a senior and an adverse remark was also awarded to her, which has been quashed by this Tribunal in Claim petition No. 89/2010, Smt. Usha Singh Vs. State of Uttarakhand, copy of the judgment has also been filed on behalf of the petitioner. In fact, Smt. Usha Singh, Senior Clerk had only endorsed the report of the petitioner. Smt. Usha Singh was not responsible for preparing the report, therefore, her adverse remark was ordered to be expunged by this Tribunal, but in the present petition, the petitioner herself was responsible to prepare the report, therefore, petitioner cannot claim

parity with Smt. Usha Singh and no benefit can be given by the judgment passed in the above mentioned claim petition.

9. No other argument was raised. On the basis of the above discussion, we are of the view that the petitioner failed to make out any case in her favour. Therefore, the petition is devoid of any merit and is liable to be dismissed. No interference is required in the impugned orders.

**ORDER**

The claim petition is dismissed. No order as to costs.

*Sd/-*

**D.K.KOTIA**  
VICE CHAIRMAN (A)

*Sd/-*

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

DATE: SEPTEMBER 30, 2013  
DEHRADUN

KNP