

**(2009) 10 MAD CK 0321**

**In the Madras High Court**

**Case No :** Writ Petition No's. 20357 and 20358 of 2009 and M.P. No's. 1 and 2 of 2009

Aarthi Exports

APPELLANT

Vs

Assistant Commissioner (CT) and Others

RESPONDENT

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**Date of Decision :** 07-10-2009

**Acts Referred:**

Tamil Nadu Sales Tax Appellate Tribunal Regulations, 1959 — Regulation 9(2), 9(3)

**Citation :** (2010) 29 VST 465

**Hon'ble Judges :** V. Ramasubramanian, J

**Bench :** Single Bench

**Advocate :** R. Senniappan, for the Appellant; R. Mahadevan, Additional Government Pleader for Tax, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

V. Ramasubramanian, J.—The petitioner has come up with the present writ petition challenging the common order passed by the Tamil Nadu Sales Tax Appellate Tribunal in two appeals.

2. Heard Mr. R. Senniappan, the learned Counsel for the petitioner. Mr. R. Mahadevan, learned Additional Government Pleader (Tax) takes notice for the respondents.

3. The case of the petitioner is that the Tribunal allowed two appeals filed by the Department in S. T. A. Nos. 33 of 2007 and 658 of 2006 ex parte on August 1, 2007, after the final hearing notice sent to the petitioner herein returned unserved. It appears that the petitioner came to know about the order of the Tribunal in the first week of September 2007 itself and the petitioner started demanding copies of the order of the Tribunal so as to work out their remedies. Though for the past two years, there is no response from the Tribunal, a notice of attachment has now been issued forcing the petitioner to come up with the present writ petitions.

4. If the Tribunal decides an appeal ex parte or dismisses an appeal for non-prosecution, the person aggrieved has a remedy of filing an application under Regulation 9(2) of the Tamil Nadu Sales Tax Appellate Tribunal Regulations. But the grievance of the petitioner is that without production of the copy of the order, the Tribunal may not entertain an application to set aside the ex parte order or for restoration.

5. Though the regulations do not contain an express stipulation that every application for restoration or for setting aside the ex parte order should be accompanied by the original order of the Tribunal, the Regulation 9(3) imposes a condition upon the person aggrieved to make an application under Regulation 9(2) within 30 days from the communication of the order of dismissal. In other words, the original is required only for the purpose of computation of the period of limitation prescribed under Regulation 9(3). But if an order was not at all communicated and the non-communication is borne out by records of the Tribunal itself, the limitation prescribed under Regulation 9(3) would not have started running at all. Therefore, there is no scope for the aggrieved person to have any grievance in such an event. It is only when records of the Tribunal reveal the communication of the copy of the order and the person making an application raises a dispute with regard to the date of communication, the production of the original order becomes significant. The production of the copy of the order is not made a condition precedent for entertaining an application u/s 9(2). Therefore, even without a copy of the order of the Tribunal, the petitioner could have approached the Tribunal under Regulation 9(2).

6. In normal circumstances, if the petitioner was able to establish that they never had any notice of the appeal at any point of time, the order of the Tribunal could have been set aside even here and the appeals remitted back. But in this case, it is not clear whether the petitioner never had any notice at any point of time. On the contrary, the order of the Tribunal proceeds on the basis as though the authorised representative did not appear inspite of several opportunities. Therefore, it is not clear from the records available as to whether no notice was ever issued to the petitioner. In such circumstances, I am of the view that the petitioner should move an application under Regulation 9(2).

7. In the result, both the writ petitions are disposed of permitting the petitioner to file necessary applications under Regulation 9(2) within two weeks from the date of receipt of a copy of this order. Upon receipt of the applications from the petitioner, the Tribunal shall entertain the same without insisting upon the original order accompanying the applications. However, if the records of the Tribunal disclose that the original order was served on the petitioner, the petitioner shall also file condone delay applications. If the records of the Tribunal do not show the service of the copy of the order of the Tribunal on the petitioner, the Tribunal shall entertain the applications for setting aside the ex parte orders even without the condone delay applications. If the petitioner files the application under Regulation 9(2) along with condone delay petitions, the condone delay

petitions may be considered sympathetically by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.