**(2011) 03 MAD CK 0185**

**In the Madras High Court**

**Case No :** Writ Petition No. 893 of 2011 and M.P. No''s. 1 and 2 of 2011

Hindustan Construction Company Ltd. APPELLANT

Vs

The Joint Commissioner (CT) and The Assistant Commissioner (CT) RESPONDENT

**Date of Decision :** 01-03-2011

**Acts Referred:**
Tamil Nadu General Sales Tax Act, 1959 — Section 32, 32(2), 36, 36(3)

**Citation :** (2011) 41 VST 490

**Hon'ble Judges :** M. Jaichandren, J

**Bench :** Single Bench

**Advocate :** S. Ramanathan, for the Appellant; K. Radhakrishnan, Goverment Advocate (Tax), for the Respondent

**Final Decision :** Allowed

## Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the Petitioner and the learned Government Advocate(Tax)appearing on

behalf of the Respondent.

2. The main contention of the learned Counsel appearing on behalf of the Petitioner is that, while an Appeal is pending, u/s 36 of the Tamil Nadu

General Sales Tax Act, 1959, before the Tamil Nadu State Appellate Tribunal, Chennai, in S.T.A. No. 290 of 2008, it would not be open to the

first Respondent to pass the impugned proceedings, u/s 32(2) of the Tamil Nadu General Sales Tax Act 1959, especially, when it is an admitted

fact that the Petitioner has filed an appeal challenging the order of the second Respondent, before the Appellate Deputy Commissioner (CT),VI,

Chennai. As such the impugned proceedings of the first Respondent is against the provisions of Section 32(2) B of the Act.

 

3. The learned Counsel for the Petitioner had relied on a decision of the supreme Court, in the State of Tamil Nadu v. Jeevanlal Ltd., reported in

103 STC Page 99, wherein it had been held as follows:

Once the order of the Appellate Assistant Commissioner is made the subject matter of appeal before the Appellate Tribunal by the Assessee who

is aggrieved by only a part of such order the Board of revenue cannot exercise its revisional Jurisdiction against the remaining part of that very

order of the Appellate Assistant Commissioner which is infavour of the Assessee and against the Revenue.

4. He had also relied on a decision of this Court, in The Deputy Commissioner of Commercial Taxes, Tiruchirapalli Vs.S. Gnanapatham, reported

in 42 STC 262, wherein, it had been held as follows:

We think the Tribunal was right in denying to the Deputy Commissioner the right to interfere in suo motu revision when the order of the Sales Tax

Officer has been the subject-matter of appeal. This is clear from the wording of Section 32(2)(b) of the Tamil Nadu General Sales Tax Act, 1959,

which reads as follows:

...(2) The Deputy Commissioner shall not pass any order under Sub-section (1), if-

....

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal, or of a revision in the

High Court;....

The order has been made the subject-matter of appeal to the Appellate Assistant Commissioner. The question is not whether every part of that

order has been the subject matter of appeal. Such a contention is not justified by the wording of the Section. The Tribunal was right in saying that

the Deputy Commissioner interfered without jurisdiction.

We dismiss this tax revision case.

5. In such circumstances, the first Respondent cannot invoke the Special powers, u/s 32 of the Tamil Nadu General Sales Tax Act, 1959, on the

ground that the earlier assessment order is prejudicial to the interest of the revenue. However, the learned Counsel appearing for the Petitioner had

submitted that as per Section 36(3) of the Tamil Nadu General Sales Tax, 1959, in disposing of an appeal, the Appellate Tribunal may, after giving the Appellant a reasonable opportunity of being heard and for sufficient reasons

to be recorded in writing.

6. No counter affidavit has been filed by the Respondents, till date. The learned Counsel appearing on behalf of the Respondents had submitted

that the Petitioner had not raised the grounds, which has been relied on before this Court, in the present Writ Petition, when the matter was

pending before the first Respondent. However, he had pointed out that the issue had been raised before the first Respondent. Even otherwise no

proceedings passed by the Respondents can be held to be valid in the eye of law, if it is as per the provisions of The Tamil Nadu General Sales

Tax Act, 1959.

7. In view of the averments made in the affidavit filed in support of this petition and in view of the submissions made by the learned Counsels

appearing on either side, and in view of the decisions cited supra, this Court finds it appropriate to set aside the impugned proceedings of the first

Respondent, dated 28.08.09, made in RC 11668/08/B4 / TNGST/1101673/2003-04 .

Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.