
(1987) 09 MAD CK 0021

In the Madras High Court

Case No : T.C.M.P. No's. 102 to 104 of 1987 in T.C. (R) SR. No's. 15096, 15100 and 15104 of 1987

K. Ganesh

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 36, 38

Citation : (1988) 68 STC 84

Hon'ble Judges : V. Rengasamy, J; Bellie, J

Bench : Division Bench

Advocate : M.V.B. Baskaran, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

V. Ramaswami, J.—These petitions are to condone the delay of 211 days in filing the tax case revisions. The revision petitions are sought to

be filed as against the order of the Sales Tax Appellate Tribunal, Coimbatore, dated 29th March, 1986. The revision petitions were filed u/s 38 of

the Tamil Nadu General Sales Tax Act, 1959. Sub-section (1) of that section provides that within ninety days from the date on which a copy of the

order under sub-section (3) or sub-section (6) of section 36 is served in the manner prescribed, any person who objects to such order or the

Deputy Commissioner may prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to

decide any question of law. The proviso to this section as it was originally enacted in 1959, read as follows :

Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had

sufficient cause for not preferring the petition within the said period.

Calculating the period of ninety days as provided under the Tamil Nadu General Sales Tax Act, 1959, and the provisions of the Limitation Act, the

last date for filing the revision petition was 28th July, 1986. However, the revisions were filed only on 24th February, 1987 with petitions to

condone the delay of 211 days in filing the revision petitions.

2. At the time when the Tamil Nadu General Sales Tax Act, 1959 was enacted, the Indian Limitation Act, 1908 was in force. Section 29 of that

Limitation Act provided that :

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore

by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefore in that Schedule, and for the purpose of

determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

(a) the provisions contained in sections, 4, 9 to 18 and 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded

by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

Therefore, section 5 of the Limitation Act was not applicable to appeals preferred u/s 38 of the Tamil Nadu General Sales Tax Act, 1959. Section

38, proviso, which we have extracted above enabled the High Court to excuse the delay in filing the petition even if it was preferred after the

period of ninety days provided under sub-section (1). After the Limitation Act, 1963 was enacted, section 29(2) was recast and it now stands :

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the

Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining

any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24

(inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

Thus, under the Indian Limitation Act, 1908, the applicability of section 5 to any proceedings under special or local law was specifically excluded,

but under the Limitation Act, 1963, unless the special or local law specifically excludes the application of section 5, it would be applicable to these

proceedings under the special or local law. Therefore, after the amendment, the proviso to section 38 of the Tamil Nadu General Sales Tax Act,

1959, as it existed become otiose, as admittedly section 38 is a special or local law within the meaning of section 29 of the Limitation Act. By the

Tamil Nadu General Sales Tax (Eighth Amendment) Act of 1986 which came into force on 15th December, 1986, the proviso to section 38 was

amended and as amended the proviso now reads :

Provided that the High Court may within a further period of forty-five days, admit a petition preferred after the expiration of the said period of

ninety days, if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

Section 29 of the Limitation Act, 1963 as we have noted already specifically provided that sections 4 to 24 shall apply only in so far as, and to the

extent to which, they are not expressly excluded by such special or local law. The question for consideration, therefore, is whether the proviso, as

amended by the Tamil Nadu Act 76 of 1986, can be said to be an express exclusion of section 5 of the Limitation Act ?

3. Learned Additional Government Pleader brought to our notice the decision of the Supreme Court reported in Mohd. Ashfaq Vs. State

Transport Appellate Tribunal, Uttar Pradesh and Others, . That was a case arising under the Motor Vehicles Act, 1939. Section 58 of the said

Act provided that a permit may be renewed on an application made for such purposes, provided that the application for renewal of a permit shall

be made (a) in the case of stage carriage permit or public carrier's permit, not less than 120 days before the date of its expiry; and (b) in any other

case not less than 60 days before the date of its expiry. Sub-section (3) of that section further provided that :

Notwithstanding anything contained in the first proviso to sub-section (2), the Regional Transport Authority may entertain an application for the

renewal of a permit after the last date specified in the said proviso for the making of such an application, if the application is made not more than 15

days after the said last date and is accompanied by the prescribed fee.

Thus, sub-section (3) vested in the Regional Transport Authority a power to

entertain an application for renewal of a permit even if it is beyond time, but in that case the time should not be more than fifteen days. The question for consideration was, whether sub-section (3) could be said to expressly exclude the provisions of section 5 of the Limitation Act which gives unlimited power to the Court or a Tribunal to excuse the delay irrespective of the number of days of delay ? Considering this question, the Supreme Court held :

It is, therefore, clear that sub-section (3) of section 58 confers a discretion on the Regional Transport Authority to entertain an application for renewal when it is made beyond the time-limit specified in the proviso to sub-section (2), but not more than 15 days late and the discretion is to be exercised in favour of entertaining the application for renewal when it is shown that there was sufficient cause for not making it in time. Now, the question which arises is : does section 5 of the Limitation Act, 1983 apply so as to empower the Regional Transport Authority, for sufficient cause to entertain an application for renewal even where it is delayed by more than 15 days ? Section 29, sub-section (2), of the Limitation Act, 1963 makes section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was sub-section (3). Does sub-section (3) expressly exclude further extension of time u/s 5 ? If it does, then section 5 cannot be availed of by the appellant for condonation of the delay. Sub-section (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it, or in other words, it shall have no power to condone the delay. There is thus an express provision in sub-section (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of section 5 in cases where an application for renewal is delayed by more than 15 days.

This decision is directly in point and concludes the question. However, the learned counsel for the petitioner relied on two other decisions, one of

the Supreme Court and the other of this Court reported in *The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly*, and

Rathinasamy Vs. Komalavalli and Another, . The Supreme Court case referred above *The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das*

and *Sons, Bareilly*, related to the question whether section 12(2) of the Limitation Act is excluded, specifically under the Act. The provision in

section 10(3-B) of the U.P. Sales Tax Act was, of course, similar to the provision which we have in the proviso to section 38. Section 10(3-B) of

the Act provides that a revision application shall be made within one year from the date of service of the order complained of, but the revising

authority may on proof of sufficient cause entertain an application within a further period of six months. The court was not called upon to consider

whether this would amount to an exclusion of section 5 of the Limitation Act, but what was considered there was whether the time taken by the

dealer in obtaining another copy of the impugned order could be excluded for the purpose of limitation in filing the revision u/s 10(1) when one

copy of the appellate order was served on the dealer under the provisions of the Act. The Supreme Court held that there is nothing in the U.P.

Sales Tax Act, expressly excluding section 12(2) of the Limitation Act for filing a revision. The learned Judges further held that merely because a

copy of the order has to be served on the parties, by the Tribunal, the time taken for supply of the certified copy to the revision petitioner could not

be excluded. It was held that section 12(2) would be applicable in computing the period of limitation for filing a revision. As may be seen from the

facts, this has no application at all to the present case. The decision in *Rathinasamy Vs. Komalavalli and Another*, has also no application. That

was concerned with the question whether section 5 of the Limitation Act is applicable to appeals preferred u/s 23(1)(b) of the Rent Control Act.

There was an argument that section 5 applies on the ground that the appellate authority before whom the revision or appeal is filed is a court and

the consideration of exclusion or otherwise will arise only when the appellate or revisional authority is a Tribunal. Ultimately, it was held in both the

cases unless it is expressly excluded, section 5 of the Limitation Act would apply. They were not concerned with a case where the power to

excuse the delay was restricted. In the circumstances, that decision also has no application to the present case. As already stated, the proviso is

very clear and it restricts the power to excuse the delay only up to 45 days. In the circumstances, therefore, the petitions filed beyond the period of 45 days are not maintainable and the petitions are accordingly dismissed. However, it is made clear that we have not considered the question whether the proviso is ultra vires the powers of the legislature on any ground raised by the learned counsel. For the purpose of completeness, we may say that he vaguely suggested that while the provision relating to appeal did not exclude the application of section 5 of the Limitation Act, the provision relating to revision is excluded and that may amount to discrimination. As already stated, the petitions are filed to excuse the delay in filing the revision petitions u/s 38 of the Tamil Nadu General Sales Tax Act, 1959. We are sitting as revisional authorities and our jurisdictions are restricted to consideration of the provisions of the Act itself and as such revisional authorities we cannot go into the constitutional validity of the provision itself.

5. Petitions dismissed.