**(1991) 06 MAD CK 0049**

**In the Madras High Court**

**Case No :** T.C. (R) Petition No. 254 of 1982 (Revision No. 75 of 1982)

M. Chokkalingam APPELLANT

Vs

State of Tamil Nadu RESPONDENT

**Date of Decision :** 18-06-1991

**Acts Referred:**
Tamil Nadu General Sales Tax Act, 1959 — Section 31(3), 31A, 32(1), 36, 36(3)

**Citation :** (1991) 06 MAD CK 0049

**Hon'ble Judges :** A.S. Anand, C.J;Kanakaraj, J

**Bench :** Division Bench

**Advocate :** S.N. Kirupanandam for M/s. C. Venkatraman and P. Srinivasan, for the Appellant; Smt. Chitra Venkatraman, Additional Government Pleader, for the Respondent

## Judgement

Dr. A.S. Anand, C.J.—This tax revision case has been preferred against the order of the Sales Tax Appellate Tribunal dated November 25, 1981, passed in C.T.A. No. 244 of 1981. It is not necessary to go into the facts of the case, as the only question that has been canvassed before us by learned counsel for the petitioner is that the State Representative was not competent to file an enhancement petition before the Tribunal prior to November 1, 1982, when section 36(3-A) of the Tamil Nadu General Sales Tax Act, 1959, was inserted by Act 22 of 1982, and, therefore, any order passed on that enhancement petition by the Tribunal cannot be sustained. For what follows, we cannot agree.

2. Section 36(3-A) was introduced in the statue book by Act 22 of 1982. This section reads thus :

"Within a period of sixty days from the date of receipt of notice that an appeal against the order passed by the Appellate Assistant Commissioner under sub-section (3) of section 31 or an order passed by the Deputy Commissioner under sub-section (3) of section 31-A or sub-section (1) of section 32 has been filed, any assessing authority or his representative appearing before the Appellate Tribunal may file an enhancement petition or a petition for restoration of the assessment or penalty or both, fully or partially, as the case may be, in the prescribed form and in the prescribed manner against the order of the Appellate Assistant Commissioner or the Deputy Commissioner as the case may be. The Appellate Tribunal may, after giving a reasonable opportunity to the appellant and the representative of the assessing authority of being heard pass such orders on the petition as it thinks fit :

Provided that the Appellate Tribunal may admit an enhancement petition or a petition for restoration of the assessment or penalty or both, fully or partially, as the case may be, presented after the expiration of the said period, if it is satisfied that the assessing authority or his representative had sufficient cause for not filing such petition within the said period."

A plain reading of the section would show that the Legislature has placed a period of limitation for filing an enhancement petition before the Appellate Tribunal by the representative of the Revenue. The proviso to the section gives powers to the Tribunal to admit an enhancement petition, etc., presented after the expiration of the aforesaid period if it is satisfied that the assessing authority or his representative had sufficient cause for not filing such petition within the said period. This section, therefore, prescribes the period of limitation for the filing of an enhancement petition by the representative appearing for the Revenue before the Tribunal. The section, in terms, does not deal with the powers of the Tribunal to pass an order of enhancement. That power is vested in the Appellate Tribunal u/s 36(3)(a)(i) of the Act. The provision reads thus :

"36(3) 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 -

(a) in the case of an order of assessment -

(i) confirm, reduce, enhance or annul the assessment or penalty or both;"

By the above section, in an appeal preferred by the assessee, the Tribunal has the power to decide the appeal by either confirming, reducing or even enhancing or annulling the assessment or penalty or both. Since, in an appeal preferred by the assessee u/s 36, it is the entire assessment which is set at large before the Tribunal, the Tribunal has the jurisdiction to go into the correctness or otherwise of the order of the assessing authority himself and pass appropriate orders. However, where the Revenue files an enhancement petition at the hearing of the appeal filed by the assessee, it is the requirement of the principles of natural justice, that the Tribunal puts the assessee on notice of the enhancement petition before passing any order adverse or prejudicial to the assessee. The Act or the Rules framed thereunder do not prohibit the filing of an enhancement petition, and since the power the enhance the assessment is vested in the Tribunal itself, it follows that the power to enhance can be exercised by the Tribunal not only suo motu after putting the assessee on notice, but also on a petition filed by the Revenue or its representative. It is, therefore, futile to contend that prior to the introduction of sub-section (3-A) to section 36, the Tribunal lacked the power and jurisdiction to pass orders on an enhancement petition filed by or on behalf of the Revenue. The view that we have taken is fortified by the judgments of this Court in Deputy Commissioner of Commercial Taxes v. Panayappan Leather Industries [1981] 47 STC 88 and State of Tamil Nadu v. Kutty Flush Doors and Furniture Company [1984] 57 STC 223.

3. Learned counsel for the petitioner, however, relied upon a judgment of a learned single Judge in Writ Petition No. 248 of 1984 (U. Gulab Singh v. State of Tamil Nadu - decided on November 23, 1988). That judgment, in our opinion, does not lay down the correct law in so far as the power of the Tribunal to pass an order of enhancement u/s 36(3)(a)(i) is concerned. As a matter of fact, the judgment is conspicuously silent about the provisions of section 36(3)(a)(i) of the Tamil Nadu General Sales Tax Act, which is the relevant provision. The judgment appears to have proceeded only on the ground that section 36(3-A) had been introduced in 1982, and prior to that, the representative could not file a petition for enhancement. Since, it ignores the provisions of the statute as noticed above, as also the Division Bench judgments of this Court (supra), the judgment of the learned single Judge in W.P. No. 243 of 1984 (Gulab Singh v. State of Tamil Nadu) cannot be said to lay down the correct law.

4. Thus, for what we have stated above, we find that the application for enhancement filed by the Revenue by its authorised representative before the Tribunal during the pendency of the appeal filed by the assessee is competent and the Tribunal had the jurisdiction to pass orders on that application after putting the assessee no notice. After the introduction of section 36(3-A) in the statute book, such an application has to conform to the period of limitation prescribed thereunder. In view of the above discussion, the revision fails and is dismissed, as the only question raised has been answered against the assessee. There will be no order as to costs.

5. Petition dismissed

 