(1990) 06 AP CK 0001

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 223 and 224 of 1990

Muthu Enterprises APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 20-06-1990

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 21, 21(2), 21(4)

Citation : (1990) 79 STC 175

Hon'ble Judges : Yogeshwar Dayal, C.J;A. Lakshmana Rao, J

Bench : Division Bench

Advocate : T. Rama Rao, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Yogeshwara Dayal, C.J. and A. Lakshmana Rao, J.—This tax revision case has been filed by the assessee against the order of the Sales Tax Appellate Tribunal Andhra Pradesh, Hyderabad, dated 23rd April, 1990 where the Tribunal declined the application for condonation of delay in filing an application for restoration of an appeal which was dismissed for default of appearance on behalf of the assessee. The case of the petitioner before the Tribunal was they felt that the assessee had no case before the Tribunal in view of the decision of this Court in Raj Sheel''s case [1987] 64 STC 398 Raj and that the present applications for setting aside dismissal of the appeal were filed since the Supreme Court (See Raj Steel and Others Vs. State of A.P. and Another, has set aside the decision of the High Court and has remanded the matter to the High Court after laying down certain guidelines for deciding the taxability.

2. Without going into question whether there was sufficient cause for condonation of delay, we called upon the learned counsel for the petitioner under to shown us the provision in the Act or the Regulation or the Rules framed under the Act which confers power to condone the delay where an application for restoration of an appeal dismissed for default was barred by time. In spite of several adjournments, the learned counsel is not able to show us any provision.

The learned counsel for the petitioner referred us to the provisions of section 21 of the Andhra Pradesh General Sales Tax Act, 1957, which provides an appeal before the Appellant Tribunal. He also referred us to the provisions of sub-section (2) of section 21 which confers power on the Tribunal to admit an appeal preferred after the period of sixty days, if the dealer satisfies the Tribunal that there was sufficient cause for not preferring the appeal within that period. We have mentioned earlier that the appeal was appeal was dismissed not on the ground that it was barred by time but on the ground of default of appearance on behalf of the dealer. Then the learned counsel for the petitioner referred us to sub-section (4) of section 21. It again renders no help to the petitioner, as this sub-section merely points out that the Appellate Tribunal may, after giving both parties of the appeal a reasonable opportunity of being heard, dispose of the matter on merits. The learned counsel then referred us to the provisions of regulation 9 of the Andhra Pradesh Sales Tax Appellate Tribunal Regulations, 1957. Regulation 9 reads as under :

"Regulation 9. (1) After the appeal has been registered, notice of the day fixed for hearing under regulation 8 in form ''C'' shall be delivered or issued registered post to the party. The notice shall state that if he does not appear on the day so fixed or any other day to which the hearing may be adjourned the appeal will be dismissed for default or disposed of on merits ex parte.

(2) Where an appeal, application or petition has been dismissed for default or disposed of ex parte, the appellant, applicant or petitioner may apply to the Tribunal for readmission of the appeal, application or petition; and where it si shown to the satisfaction of the Tribunal that he was prevented by sufficiant cause from appearing when the appeal, application or petition was called on for hearing, the Tribunal may readmit the appeal, application or petition on such terms as thinks fit.

(3) An application for readmission of an appeal, application or petition dismissed for default or disposed of ex parte, shall be made within thirty days from the date communication of the order of dismissal."

3. It is clear sub-section (3) of the aforesaid that the period of limitation is thirty days from the date of communication of the order of dismissal for making an application for restoration of such an application dismissed for default. This regulation does not provide any power whatsoever to the Tribunal to condone the delay if an application for restoration of the appeal is filed beyond their days. Since there is no provision pointed out to us any power to the Tribunal to condone the delay for restoration of an appeal dismissed for default, we have no opinion but to dismiss the tax revision case.

4. The learned counsel for the petitioner us to the decision of this Court In T.R.C. No. 1 of 1967 dated 11th March, 1970 rendered by Obul Ready, J., and Ramachandra Raju, J. It is not clear from this judgment whether there was an application for the restoration of an appeal dismissed for default or an order was

passed in a case where the appeal itself was barred by time and the Tribunal declined to condone the delay in filing the appeal. This judgment has no application to the present case. In view of lack of power to condone the delay, we have no option but to dismiss the tax revision cases. They are accordingly dismissed. There shall be order as to costs.

5. Petitioner dismissed.