

(1991) 01 MAD CK 0011
In the Madras High Court
Case No : Tax Case No. 1419 of 1990

State of Tamil Nadu		APPELLANT
	Vs	
Aristo Paints (P.) Ltd.		RESPONDENT

Date of Decision : 21-01-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12A, 14, 15, 16

Citation : (1992) 85 STC 54

Hon'ble Judges : Mishra, J;Govindasamy, J

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader Taxes, for the Appellant;

Judgement

Mishra, J.—The Revenue has appealed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madras,

under which the respondent/assessee's appeal has been allowed and the order of the Appellate Assistant Commissioner under which he held that

the appeal was barred by limitation, has been set aside.

2. The assessing officer's order dated September 17, 1986, was communicated to the assessee on October 18, 1986. He preferred an appeal

before the Appellate Assistant Commissioner as provided under the Tamil Nadu General Sales Tax Act, 1959 on December 18, 1986. Taking

notice of an amendment which came into effect from December 17, 1986, a day before the filing of the appeal, the Appellate Assistant

Commissioner held that the appeal was barred by limitation. The Tribunal, however, has held that the appeal was not barred by limitation and that

the Appellate Assistant Commissioner had committed an error of law in rejecting the appeal on the ground of limitation. It has accordingly set aside

the Appellate Assistant Commissioner's order and remanded the case back to him with a direction to condone the delay and take the appeal in file and dispose of it in accordance with law.

3. Section 31 of the Tamil Nadu General Sales Tax Act reads :

(1) Any person objecting to an order passed by the appropriate authority u/s 4-A, section 12, section 12-A, section 14, section 15, sub-sections

(1) and (2) of section 16, section 18, sub-section (2) of section 22, section 23 or section 27 other than an order passed by an Assistant

Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him in the manner prescribed,

appeal against such order to the Appellate Assistant Commissioner having jurisdiction :

Provided that the Appellate Assistant Commissioner may, within a further period of thirty days, admit an appeal presented after the expiration of

the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first

mentioned period :

Provided further that in the case of an order u/s 12, section 12-A, section 14, section 15 or sub-sections (1) and (2) of section 16, no appeal shall

be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due

or of such instalments thereof as might have become payable, as the case may be.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding

fifty rupees as may be prescribed.

(3) In disposing of an appeal, the Appellate Assistant Commissioner may, after giving the appellant a reasonable opportunity of being heard, and

for the 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 the penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such other orders as he may think fit; or

(b) in the case of any other order, confirm, cancel, or vary such order :

Provided that at the hearing of any appeal against an order of the assessing authority, the assessing authority shall have the right to be heard either

in person or by a representative.

(4) omitted.

(5) Notwithstanding that an appeal has been preferred under sub-section (1) the tax shall be paid in accordance with the order of assessment

against which the appeal has been preferred :

Provided that the Appellate Assistant Commissioner may, in his discretion, ""give such directions as he thinks fit in regard to the payment of the tax

before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such form and in such manner as may be

prescribed.

4. The provision in section 31(1) quoted above as it stands today is one after first amended by Act 76 of 1986 and again amended by Act 18 of

1989. Before the amendments, the proviso to section 31(1) read as follows :

Provided that the Appellate Assistant Commissioner may admit an appeal presented after the expiration of the said period if he is satisfied that the

appellant had sufficient cause for not presenting the appeal within the said period.

Act 76 of 1986, introduced the words ""may, within a further period of fifteen days, admit an appeal presented after the expiration of the said

period of thirty days"" in the proviso with effect from December 17, 1986. The period of ""fifteen days"" has since substituted by the words ""thirty

days"" with effect from July 15, 1989. It is clear thus from the facts of this case that the right of appeal accrued to the assessee under the provisions

of the unamended section 31(1) of the Act, but before the presentation of the appeal, the amendment came into effect. The right of appeal is not

merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior Tribunal to a superior Tribunal

becomes vested in a party when proceedings are first initiated, and before a decision is taken by the inferior court. The assessee's right to appeal

also carried with it right to seek condonation of delay, if any, in filing the appeal under the unamended proviso afore quoted and on a sufficient

cause shown by him, it was open to the Tribunal to condone the delay. The power of the Appellate Assistant Commissioner to condone the delay

was not limited to any period whether fifteen days or thirty days as found in the first amendment by Act 76 of 1986 or the second amendment by

Act 18 of 1989. It is also clear that the period of fifteen days introduced by Act 76 of 1986 before its substitution by a period of thirty days by

Act 18 of 1989 had already expired before the amendment came into force with effect from December 17, 1986. If there was a vested right in the

assessee to prefer an appeal and seek condonation of delay on sufficient cause having been shown by him, that right was available to him as if there

was no amendment by Act 76 of 1986. Otherwise just by a stroke of the amendment with came just a day before the filing of the appeal by the

assessee, the right stood obliterated. A pre-existing right of appeal is not destroyed by an amendment unless the amendment is shown to have been

made to operate retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in

its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. In the absence

of any express provision intending to destroy the right so vested or any such implied intention read in the amendment, recourse can be taken to the

provisions in the Tamil Nadu General Clauses Act, 1891. Section 8 thereof reads :

Effect of repealing the Act. - Where any Act, to which this Chapter applies, repeals any other enactment, then the repeal shall not -

(a) affect anything done or any offence committed, or any fine or penalty incurred or any proceeding begun before the commencement of the

repealing Act; or

.....

(d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;

5. The old law must therefore, for the purpose of the appeal by the assessee be deemed to continue and the same cannot be subjected to the

amendment.

6. We are supported in our view by a judgment of the Supreme Court in Hoosein Kasam Dada v. State of Madhya Pradesh [1953] 4 STC 114.

Dealing with a case of an appeal by the assessee under the Central Provinces

and Berar Sales Tax Act, 1947, the Supreme Court had the occasion to deal with an amendment which placed a substantial restriction on the assessee's right of appeal. The Supreme Court's judgment in the said case is a study in the laws that affect any vested right or put fetters or impediments upon such vested right of appeal. The Supreme Court has quoted with approval a judgment of the Calcutta High court in the case of Sardar Ali v. Dalimuddin ILR(1929) Cal 512 in which it was observed :

Unless the contrary can be shown, the provision which takes away jurisdiction is itself subject to the implied saving of the litigants' right.

and added -

..... The true implication of the above observation as of the decisions in the other cases referred to above is that the pre-existing right of appeal is

not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-

existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to

support the continuation of the right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law

must govern the exercise and enforcement of that right of appeal and there can then be no question of the amendment provision preventing the

exercise of that right. The argument that the authority has no option or jurisdiction to admit the appeal unless it be accompanied by the deposit of

the assessed tax as required by the amended proviso to section 22(1) of the Act overlooks the fact of existence of the old law for the purpose of

supporting the pre-existing right and really amounts to begging the question. The new proviso is wholly inapplicable in such a situation and the

jurisdiction of the authority has to be exercised under the old law which so continues to exist.

7. Since we are of the opinion that the law as it stood prior to the amendment by Act 76 of 1986 continued to govern the case of the

assessee/respondent, we have no hesitation in upholding the order of the Tribunal. The Tribunal has rightly remanded the case back to the learned

Appellate Assistance Commissioner with a direction to condone the delay and take the appeal in file and dispose of the same in accordance with

law. There is no merit in this revision petition. The revision petition is accordingly

dismissed.

8. Petition dismissed.