

(1997) 10 MAD CK 0017
In the Madras High Court
Case No : T.C.P. No. 571 of 1990

State of Tamil Nadu

APPELLANT

Vs

Gillanders Arbutnot and Co. Ltd.

RESPONDENT

Date of Decision : 18-10-1997

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 31A

Citation : (2003) 133 STC 493

Hon'ble Judges : K.P. Sivasubramaniam, J; Janarthanam, J

Bench : Division Bench

Advocate : T. Mathi, for the Appellant;

Final Decision : Dismissed

Judgement

Janarathanam, J.—This revision, at the instance of the Revenue, is directed against the order dated 10th day of January, 1989 of the Tamil

Nadu Sales Tax Appellate Tribunal (Main Bench), Madras-104 (for short "the Tribunal") and made in T.A. No. 234 of 1986 relating to the

assessment year 1979-80.

2. The assessee-dealers--Gillanders Arbutnot & Co., Ltd., 30, Rajaji Salai, Madras-1, are registered dealers under the Tamil Nadu General Sales

Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959 for short "TNGST Act") and the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956--for

short "CST Act") as well. They have been assessed to tax under CST Act by the assessing officer for the said assessment year, by order dated

February 20, 1985. The order so passed was served upon the assessee-dealers on March 12, 1985.

3. u/s 31-A of TNGST Act, as is stood then, an appeal to the Deputy Commissioner has to be filed within a period of thirty (30) days from the

date of service of the order, besides filing the receipt evidencing the proof of payment of admitted tax. As such, the appeal ought to have been filed on or before April 11, 1985.

4. The assessee-dealers, it appears, filed the appeal before the Deputy Commissioner (CT), Madras North Division, Madras-6 only on May 9, 1985, after a delay of twenty-seven days. One day, earlier to the filing of the appeal, the assessee-dealers, it appears, filed the receipt for payment of admitted tax.

5. They also filed an application for the condonation of the delay so caused in filing the appeal.

6. The said Deputy Commissioner construed the provisions of Section 31-A, as it stood then, as if the appeal filed beyond the period of thirty (30) days, along with the receipt evidencing payment of admitted tax, is not entertainable and consequently rejected the same.

7. The aggrieved assessee-dealers filed an appeal in T.A. No. 234 of 1986 before the Tribunal and the Tribunal, after taking into consideration the relevant provisions of law, in the light of the factual matrix allowed the appeal, by setting aside the order of the Deputy Commissioner and directed him to take the appeal on file and dispose of the same on merits, accordingly to law, giving rise to the present action T.C.(P) No. 571 of 1990.

8. Despite service of notice, the assessee-dealers did not choose to engage a counsel of their choice. Nor anyone on their behalf was present in court to defend them in this action. Consequently, there is no other go for this Court, except to dispose of the matter, by hearing the arguments of Mr. T. Mathi, learned Government Advocate (Taxes) representing the Revenue.

9. From the pith and submission of Mr. T. Mathi, learned Government Advocate (Taxes) representing the Revenue, the one and only question that crops up for consideration is as to :

Whether an appeal against the order of the assessing officer, before the Deputy Commissioner is entertainable, if filed beyond the period of thirty (30) days, along with the receipt evidencing payment of admitted tax, even in the extreme case of sufficient cause being therefore the condonation of the delay?

10. The Point :

Section 31-A(1), as it then stood, which is relevant for our present purpose, reads as under :

31-A. Appeal to the Deputy Commissioner.--(1) Any person objecting to an order passed by the Assistant Commissioner u/s 4-A, Section 12,

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 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 Deputy

Commissioner empowered by the Government in this behalf :

Provided that the Deputy 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 :

Provided further that in the case of an order u/s 12, 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".

11. From a perusal of what has been extracted above, it is rather crystal clear that as against the order of assessment by the assessing officer, an

appeal had been provided to the aggrieved assessee before the Deputy Commissioner and such an appeal has to be filed within a period of thirty

(30) days from the date of service of the order of assessment on the assessee. This is the effect of Sub-section (1) of the said section.

(a) Under the first proviso to the said sub-section, it is permissible for the Deputy Commissioner to entertain an appeal beyond the period of thirty

(30) days, if he is satisfied that the assessee-dealer had sufficient cause for not presenting the appeal within the said period of thirty (30) days.

(b) Under the second proviso, it is incumbent upon the assessee-dealer to adduce satisfactory evidence as to the proof of payment of admitted tax,

along with the appeal filed. The two provisos operate with each other. Mere filing of the appeal, when it is not being accompanied by satisfactory

proof of payment of admitted tax is not sufficient for the appeal to be entertained, though filed within a period of limitation of thirty (30) days. To

put it otherwise, the appeal so filed must have to be accompanied by the satisfactory proof of payment of admitted tax. As such, it is crystal clear

that the date of filing of the appeal would be taken as the date of filing of the receipt evidencing proof of payment of admitted tax. The Deputy

Commissioner is also given the power to condone the delay, if any, caused in filing the appeal, on showing the acceptance of sufficient cause for

the delay in filing or presentation of the appeal.

12. In the case on hand, as already adverted to, though the appeal had been filed on May 9, 1985 yet satisfactory proof, in the shape of receipt

evidencing payment of admitted tax had already been filed on May 8, 1985. Here, the payment of tax and the filing of the appeal are not coinciding

and the two events happened on different dates, separated by a day. The payment of tax, without the appeal being filed, is of no consequence,

since the appeal had been filed on May 9, 1985, which date ought to be taken as the date, on which the appeal had been duly filed, after a delay

of twenty-seven days. For condoning the delay so caused, the assessee-dealer filed a petition and deriving the solidified satisfaction as to the

sufficiency of cause for the said delay, the Tribunal allowed the appeal by setting aside the order of the Deputy Commissioner and directed him to

entertain the appeal and dispose of the same according to law, which, we feel, in the light of the statutory provisions adumbrated u/s 31-A of

TNGST Act, as it then stood, coupled with the factual matrix, cannot at all be stated to be suffering from any infirmity or error--either on the

question of law ; or on facts.

13. In this view of the matter, the revision deserves to be dismissed and the same is accordingly dismissed.