(1994) 02 MAD CK 0018

In the Madras High Court

Case No : Tax Case Miscs. Petition No''s. 29, 290, 297, 298, 299, 329, 400, 551, 552, 571, 721, 725, 727, 728, 729, 730 and 782 of 1993 in Tax Case Revision SR. No''s. 38792, 19373, 61313 of 1992, 44221 and 44223 of 1991, 19342 of 1992, 17798, 33152, 33150, 15251,

State of Tamil Nadu APPELLANT

Vs

Hindustan Motors Ltd. RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 22, 38, 38(1)

Citation : (1994) 02 MAD CK 0018

Hon'ble Judges : K.A. Swami, C.J;Somasundaram, J

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader Taxes, for the Appellant; Sundareswaran, Karuppiah, Z. Suganchand Jain, C. Natarajan, P.K. Krishnaswamy, S. Ramanathan, R. Venkataraman, A. Chandrasekaran, R. Gangadharan and D. Thirulokchand Chopda, for the Respondent

Judgement

K.A. Swami, C.J.—In all these petitions, the question that arises for consideration is as to whether the delay in filing the revision petition can

be condoned, on applying the law that stood prior to the filing of these revision petitions, or in other words, on the date the proceeding out of

which the revision petition arises, commenced. It is submitted that on the date the proceedings commenced, in some of the cases, there was no

period prescribed for condoning the delay in filing the revision petitions, whereas in some cases, there was a period prescribed fro condoning the

delay in filing the revision petitions. Of course, in one of the cases, it is submitted that the proceeding has been started u/s 22 of the Tamil Nadu

General Sales Tax Act, 1959, after coming into force of the Amendment Act 76 of 1986.

2. Therefore, the question that has to be considered is as to whether there is a vested right in the petitioners to have the delay in filing the revision

petition condoned with reference to the law that stood on the date the proceedings commenced or whether the law that is obtaining on the date the

revision petitions are filed has to be applied for condonation of the delay in filing the revision petitions.

3. In State of Tamil Nadu v. Aristo Paints (P.) Ltd. [1992] 85 STC 54; (1992) 1 MTCR 19, a Division Bench of this Court, on applying a

decision of the Supreme Court reported in Hossein Kasam Dada (India) Ltd. v. State of Madhya Pradesh [1953] 4 STC 114 has held that there

is a vested right in the assessee to prefer an appeal and seek condonation of delay on sufficient cause, as such, that right is available to him as if

there is no Amendment Act 76 of 1986. It has also been further held that a pre-existing right of appeal is not destroyed by an amendment, unless

the amendment is shown to have been made to operate retrospectively by express words or necessary intendment. Accordingly, it has been held

that the Amendment Act 76 of 1986 is not applicable to the appeals which arise out of the proceedings started prior to the coming into force of the

Amendments Acts 76 of 1986 and 18 of 1989.

4. Another Division Bench of this Court in Ganesh v. State of Tamil Nadu [1988] 68 STC 84 has held that the proviso to section 38(1) of the

Tamil Nadu General Sales Tax Act, 1959, amended by the Tamil Nadu General Sales Tax (Eighth Amendment) Act, 1986, which came into force

on December 17, 1986, restricting the power to excuse the delay in filing revision petitions u/s 38 only up to a period of 45 days, is an express

exclusion of section 5 of the Limitation Act, 1963, which gives unlimited power to the court or Tribunal to excuse the delay irrespective of the

number of days of delay. Therefore, it has been held that the revision petition filed beyond the period of 45 days after the expiry of the period of

limitation is not maintainable.

5. Thus, two Division Benches have taken diametrically opposite views. If only there had not been any decision of the Supreme Court directly

bearing upon the point, it would have been a matter to be decided by a larger Bench, because the decision of a Division Bench cannot at all be

overruled by another Division Bench. However, the Supreme Court in Vinod

Gurudas Raikar Vs. National Insurance Co. Ltd. and others, has

considered this question. In that case, an application under the Motor Vehicles Act claiming compensation, was filed beyond the time. The

Supreme Court made a distinction that the right to file an application is a vested right, but as far as the condonation of delay in filing the application

is concerned, it cannot at all be considered a vested right and therefore, the law that is obtaining on the date of the case is filed, has to be applied.

The relevant portion of the judgment reads thus :

Having actually initiated the proceeding when the old Act covered the filed a claimant could say that his right which had accrued on filing of the

petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condonation of delay can be

governed only by the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes

applicability of the enactment when the need arises to take its benefit. In the present case the occasion to take the benefit of the provision for

condonation of delay in filing the claim arose only after repeal of the old law. Obviously the ground for condonation set up as ''sufficient cause'' also

relates to the time after the repeal. The benefit of the repealed law could not, therefore, be available simply because the cause of action for the

claim arose before repeal. ''Sufficient cause'' as a ground of condonation of delay in filing the claim is distinct from ''cause of action'' for the claim

itself. The question of condonation of delay must, therefore, be governed by the new law. We accordingly hold that the High Court was right in its

view that the case was covered by the new Act, and delay for a longer period than six months could not be condoned. The appeal is dismissed,

but in the circumstances without costs"".

6. Therefore, it is evident that the Supreme Court has held that the law as to condonation of delay relates to procedure and as such, the law that is

obtaining on the date the case is filed, has to be applied. The decision in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, has

again been affirmed and followed in the decision reported in Union of India Vs. Harnam Singh, . Thus, the view taken in State of Tamil Nadu Vs.

Aristo Paints (P.) Ltd., cannot be held to be correct in law. Whenever a decision of a High Court is found to lay down a law contrary to a decision of the Supreme Court, such a decision cannot be held to be a binding precedent. Under article 141 of the Constitution, the law declared by the

Supreme Court shall be binding on all the courts within the territory of India, any decision of any High Court taking contrary view cannot be

considered to be valid and laying down a binding precedent. Therefore, in the light of the decisions of the Supreme Court in Vinod Gurudas Raikar

Vs. National Insurance Co. Ltd. and others, and Union of India Vs. Harnam Singh, which are binding on us under article 141 of the Constitution,

the decision in State of Tamil Nadu Vs. Aristo Paints (P.) Ltd., has to be declared that it is no more a good law, whereas the decision in K.

Ganesh Vs. State of Tamil Nadu, falls in line with the decision of the Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd.

and others, A Division Bench of this Court in S.P.A.M. Krishnan Chettiar and Son Vs. Income Tax Settlement Commission and another, has also

taken a view, which also falls in line with the decision in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, that a person has not

vested right in the course of procedure, but has a right of prosecution only in the manner prescribed for the time being in force, and if the mode of

procedure is altered, he has no other opinion but to proceed according to the altered mode, and a change in the law of procedure operates

retrospectively unlike the law relating to vested right. We have already pointed out that as far as the condonation of delay in filing an appeal or

revision is concerned, there is no vested right. It is only a matter of procedure and as it is only a privilege to claim benefit of the provision of

condonation of delay, it can only be governed by the law in force at the time of delay, as pointed out in Vinod Gurudas Raikar Vs. National

Insurance Co. Ltd. and others, .

7. We may also point out that Hoosein Kasam Dada''s case [1953] 4 STC 114 (SC) does not deal with the issue in question. Therefore, the

application of the ratio of that decision to State of Tamil Nadu Vs. Aristo Paints (P.) Ltd., cannot be accepted as correct.

8. In the view we take, T.C.M.P. 29 of 1993 even though filed after the coming into force of the Amendment Act 18 of 1989, which came into

force on July 15, 1989, has to be dismissed, because the delay in filing the revision is 106 days. Accordingly, T.C.M.P. 29 of 1993 is rejected.

Consequently, T.C.S.R. 38792 of 1992 is disposed of as barred by time.

9. In so far as T.C.M.Ps. 551 and 552 of 1993, 400 of 1993, 721 of 1993, 725 of 1993, 290 of 1993, 297 of 1993 and 298 and 299 of 1993

are concerned, there is a delay of more than 90 days in filing those revision petitions. Consequently, even on applying Act 18 of 1989, the delay

cannot be condoned, because it exceeds the limit prescribed by the statute for condoning the delay. Accordingly, these T.C.M.Ps. are dismissed.

As a result thereof, the connected T.C.S.Rs. are also disposed of as barred by time.

10. T.C.M.Ps. 571 of 1993, 727 to 730 of 1993, 782 of 1993 and 329 of 1993 are required to be allowed, because in all these cases, there is a

delay of less than 90 days in filing the revision petitions. These are governed by Act 18 of 1989, as the same have been filed after July 15, 1989.

We are also satisfied with the explanation offered for the delay. There is no objection filed by the respondents. Accordingly, these T.C.M.Ps. are

allowed. The delay in filing the revision petitions is condoned.

ORDER :

T.C.M.P. Nos. 298 and 299 of 1993 having been set down this day for being mentioned pursuant the Order of this Court dated December 17,

1993 and made in T.C.M.P. No. 29 of 1993 and connected petitions, in the presence of the aforesaid Advocates the court made the following

Order :

The Order of the Court was made by the honourable the Chief Justice.

These two petitions were disposed of along with T.C.M.Ps. 29 of 1993 and other connected petitions on the basis that the delay caused in these

petitions was more than the limit prescribed by Tamil Nadu General Sales Tax Act, 1959 for condoning the delay in filing the revision petitions. It is

now brought to our notice by learned Additional Government Pleader for Taxes that by oversight, it was not brought to our notice that in these two

petitions, there was a delay of only 8 days. After noticing this mistake, it was mentioned to us to be taken up rectify the same. Hence, these matters

are taken up. On verification, we are satisfied that the delay in filing these cases is only 8 days. If that be so, the petitioner is entitled to condonation

of the delay, having regard to the provisions contained in the Act. Hence, we modify the common order dated December 17, 1993 in so far as it relates to T.C.M.Ps. 298 and 299 of 1993 and recall that portion of the order and allow T.C.M.Ps. 298 and 299 of 1993, consequently direct

TC (R) SRs. 44221 and 44223 of 1991 to register and post them for admission. In other respects, the common order dated December 17, 1993,

stands undisturbed.

