(1991) 06 MAD CK 0032

In the Madras High Court

Case No : Tax Case No. 1168 of 1980 (Revision No. 724 of 1980)

State of Tamil Nadu APPELLANT

Vs

Saganla RESPONDENT

Date of Decision : 22-06-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 36(6), 38

Citation : (1991) 06 MAD CK 0032

Hon'ble Judges : Venkataswami, J;Raju, J

Bench : Division Bench

Judgement

Venkataswami, J.—The Revenue has filed this revision petition against the order of the Tribunal in T.M.P. No. 127/80 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Second Additional Bench), Madras, dated June 11, 1980.

2. The brief facts leading to the filing to this revision are as under : The respondent-assessee filed an application u/s 36(6) of the Tamil Nadu General Sales Tax Act, 1959, read with section 5 of the Limitation Act, to condone a delay of 7 years and 158 days. The Tribunal notwithstanding, the objections raised on behalf of the Revenue, had condoned the delay. While condoning the delay the Tribunal has observed as follows :

"The appeal filed by the petitioner was dismissed by the Tribunal on June 8, 1971 and against the orders of the Tribunal, the petitioners preferred revision petition u/s 38 of the Tamil Nadu General Sales Tax Act to the High Court in T.C. No. 97 of 1972 which was dismissed on September 16, 1976. Thereupon the petitioner filed S.C.P. No. 446 of 1977 in the Madras High Court for seeking leave to appeal to the Supreme Court and this was dismissed on August 29, 1979. Then the petitioner filed a SLP S.L.P. (Civil) No. 5819 of 1979 in the honourable Supreme Court along with a petition to condone the 9 days delay in filing the SLP and the honourable Supreme Court by its order dated October 5, 1979 permitted the appellants to withdraw the petition to enable them to file a review petition before the Tribunal. The order of the Supreme Court was made ready on October 25, 1979 and received by the appellant on October 28, 1979. The petitioners have filed the condonation of delay petition as well as the review petition before the Tribunal on November 23, 1979 within one month from the date of receipt of the Supreme Court''s order. So the chain of connecting litigation would show that there is sufficient cause for the delay of 7 years and 158 days to file this review petition. Further the honourable Supreme Court itself by its order dated October 5, 1979 has permitted the petitioner to file the review petition before this Tribunal and this order would imply that the 9 days delay to file the SLP before the Supreme Court has been condoned. So the point is found in favour of the petitioner."

This revision is filed against the above order of the Tribunal condoning the delay.

3. The learned Additional Government Pleader (Taxes) contended that in the light of the language of section 36(6) of the Tamil Nadu General Sales Tax Act, there is no scope for condonation of delay or invoking section 5 of the Limitation Act. In other words, the learned Additional Government Pleader contended that any review will have to he fired within a year and beyond that the Tribunal has no power to entertain the review application. We are unable to agree with the learned Additional Government Pleader. The fact that a limitation is prescribed does not mean that application of section 5 of the Limitation Act is excluded from the purview of the section disabling the Presiding Officer from applying the same when invoked. It is well-settled that unless a specific prohibition is there in the section itself section 5 of the new Limitation Act will apply (vide Arrya Vysia Samajam v. Murugesa Mudaliar 1990 TLNJ 82 . The ratio laid down in the above case squarely applies to the facts of this case. Accordingly we find there is no substance in the argument of the learned Additional Government Pleader. Consequently, the revision fails and is dismissed. No costs.

4. Petition dismissed.

