

**(2001) 09 MAD CK 0112**

**In the Madras High Court**

**Case No :** Writ Petition No's. 4355, 4356 and 5391 of 2001 and W.M.P. No's. 6146, 6147 and 7678 of 2001

Surya Service Station and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 18-09-2001

**Acts Referred:**

Pondicherry General Sales Tax Act, 1967 — Section 34

**Citation :** (2001) 3 MLJ 700 : (2003) 129 STC 280

**Hon'ble Judges :** D. Murugesan, J

**Bench :** Single Bench

**Advocate :** Ravindran, for G.R. Swaminathan, for the Appellant; R. Natarajan, Additional Government Pleader, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

D. Murugesan, J.—In W.P. No. 5391 of 2001, the petitioner had challenged the order of the second respondent made in proceedings No. Re. 1396/AAC/2000 dated February 27, 2001 and for a consequential direction to the second respondent to admit the appeal filed by the petitioner on September 14, 2000 challenging the assessment order dated August 21, 2000 passed by the second respondent demanding payment of 25 per cent of the difference of tax as assessed and the tax as admitted and dispose of the appeal on merits.

2. In W.P. Nos. 4355 and 4356 of 2001, the petitioners pray for the issue of a writ of mandamus directing the second respondent to admit the appeal preferred by the petitioners on September 14, 2000 and August 25, 2000 respectively challenging the assessment order dated August 4, 2000 and August 18, 2000 respectively of the third respondent without demanding payment of 25 per cent of the difference of the tax as assessed and the tax as admitted and dispose of the appeal on merits.

3. Since the issue involved in all the three writ petitions are one and the same,

all the three writ petitions are taken up for hearing and disposed of by this common order.

4. In all the three writ petitions, the issue involved is as to the applicability of amended Act No. 4 of 2000 to the petitioners under the Pondicherry General Sales Tax Act, 1967. There is no dispute that the said Act came into force on June 1, 2000. By the said Act in Section 34 of the Pondicherry General Sales Tax Act, 1967, the following words were added to the second proviso "and 25 per cent of the difference of tax assessed by the assessing authority and the tax admitted by the appellant". Prior to, the said amendment, the petitioners were entitled to prefer an appeal without deposit of 25 per cent of the difference of tax assessed by the assessing authority as a pre-condition for filing appeal. After the amendment, in order to prefer an appeal, the petitioners, shall deposit 25 per cent of the difference of tax as assessed by the authority. According to the learned counsel for the petitioners in all the three writ petitions, the returns became due for the assessment year 1996-97 when the erstwhile rule 60 of the Pondicherry General Sales Tax Act, 1967 was in force and on the date of notice, gist of judgment along with the proposal was served on the petitioners by the assessing authority and were prior to the above amendment, which came into force on June 1, 2000. Therefore, the petitioners cannot be insisted to deposit 25 per cent of the difference of tax assessed by the assessing authority for the purpose of entertaining the appeal. In support of the said submission, the learned counsel would rely upon an order made in Special Tribunal in Hugs Advertising Industries v. Commercial Tax Officer, Vadapalani Assessment Circle, Chennai [2000] 119 STC 591. In the said judgment, the Special Tribunal while considering the relevant date on which a right vested in an assessee has to say thus:

"23. We also give considerable weight to the Full Bench judgment in Tamil Nadu Small Industries Corporation Limited Vs. State of Tamil Nadu, . They have diluted the emphasis on "lisn and therefore the emphasis on commencement of proceedings in tax laws, become important. In this connection, we can also refer to Rules 7 to 18 of the Tamil Nadu General Sales Tax Rules framed under the Tamil Nadu General Sales Tax Act. They prescribed the dates when dealers are obliged to file returns, under various circumstances. Even if a nil return is filed and accepted, there is no guarantee that it will not be re-opened. Any assessment order can also be revised. It is not proper to leave the discretion to the authorities, as to when they call for accounts or when they issue a pre-assessment notice or a revision notice. It is wiser and safer to adopt a firm date as the date on which the vested right of appeals vests on the assessee. We, therefore hold that the date of filing a return or the date on which the return is due as per the Tamil Nadu General Sales Tax Act and Rules, whichever is earlier, as the date on which right of appeal vests on the dealer/assessee. Therefore, in all cases where the date of return or when the return became due under the Tamil Nadu General Sales Tax Act and Rules, whichever is earlier, was prior to Tamil Nadu Act 14 of 1999, will not apply and appeals can be filed in accordance

with law prevailing prior to June 14, 1999, when Act 14 of 1999 came into force.

24. Consequently, instead of the prayers sought for in the original petitions we uphold the validity of Tamil Nadu Act 14 of 1999, but give below the following directions regarding the retrospective nature of the Act. The Act is admittedly prospective in nature. However, a right of appeal inheres in a dealer/assessee the very moment when he files a return under the Tamil Nadu General Sales Tax Act or when he is obliged to file a return within the dates prescribed under the Tamil Nadu General Sales Tax Rules, whichever is earlier. Therefore, Tamil Nadu Act 14 of 1999 cannot apply to assessment proceedings relating to such returns filed or the dates prescribed in the Rules for filing such returns whichever is earlier. In respect of those transactions and assessments the law as it existed prior to Tamil Nadu Act 14 of 1999 will alone apply. The original petitions are disposed of in the above manner."

5. Based upon the said judgment, the learned counsel for the petitioner submitted that the date of filing a return or the date on which a return is due, whichever is earlier, is the relevant date to be considered for filing appeal. He further submitted that the date of filing return and the date on which the return was due were prior to the Amendment Act No. 4 of 2000, which came into force on June 1, 2000.

6. Learned counsel for the petitioner further submitted that the respondents in W.P. No. 5391 of 2001 insisted deposit of 25 per cent of the difference of tax as assessed, to entertain the appeal of the petitioner. The assessment orders were passed after the amendment has come into force taking into consideration of the date of the assessment and the said fact has not been disputed by the respondents. Therefore, the learned counsel submitted that the refusal to entertain the appeals filed by the petitioners when a right to file appeals accrued on the petitioners prior to the amendment, by insisting the pre-deposit of 25 per cent of the difference of tax as assessed, is erroneous and is liable to be set aside and consequently the petitioners are entitled to prefer an appeal without payment of 25 per cent of the difference of tax as assessed.

7. Mr. R. Natarajan, learned Additional Government Pleader, Pondicherry on the other hand submitted that the Supreme Court in Hardeodas Jagannath Vs. State of Assam and Others, : while considering the question of applicability of the Central Government Notification dated April 15, 1948 extending the Assam Sales Tax Act (17 of 1947) to Shillong Administered Areas, finally laid down the law in the following words : "it was contended that the amendment came into force with effect from April 1, 1958, and it cannot be given retrospective effect so as to apply to assessment periods ending on September 30, 1956, March 31, 1957 and September 30, 1957. We are unable to accept this argument as correct because the assessments for these periods were completed after the amending Act came into force, i.e., after April 1, 1958. The appeals against the assessments were also filed after the amendment". Learned counsel therefore submitted that the law laid down by the Constitutional Bench is binding on this Court. In fact, the

said judgment also came up for consideration by the Special Tribunal in the judgment referred by the learned counsel for the petitioners in *Hugs Advertising Industries v. Commercial Tax Officer* [2000] 119 STC 591; While considering the said judgment, the Tribunal was more on the point of deciding the Us between the parties. In fact, the judgment of the Supreme Court in *Hardeodas Jagannath Vs. State of Assam and Others*, : was excluded by the Tribunal on the ground that the main question related to the extension of Assam Sales Tax Act (17 of 1947) to Shillong Administered Areas. The learned counsel submitted that the question of the applicability of the amendment Act to the assessments which were not completed prior to the amendment and admittedly completed after the amendments were not considered and discussed. Therefore the learned Additional Government Pleader submitted that in view of the judgment of the Supreme Court in *Hardeodas Jagannath Vs. State of Assam and Others*, : the petitioners in order to prefer appeal should abide by the amended provisions of Section 34 and deposit the 25 per cent of the difference of tax assessed. Learned Additional Government Pleader would also rely upon yet another judgment in *Goodluck Agencies v. State of Tamil Nadu* [1999] 113 STC 122 wherein the Tamil Nadu Taxation Special Tribunal while considering a similar amendment in the Tamil Nadu General Sales Tax (Amendment) Act, 1997 held that the date of the actual assessment is the relevant date for the purpose of filing appeal. Hence, the learned counsel submitted that the impugned order in W.P. No. 5391 of 2001 is in order with the law laid down by the apex Court in the judgment in *Hardeodas Jagannath Vs. State of Assam and Others*, :

8. It is not in dispute that the assessment orders were passed after the Amendment Act No. 4 of 2000, which came into force on June 1, 2000. The submission of the learned counsel for the petitioner based upon the judgment of the Special Tribunal in *Hugs Advertising Industries v. Commercial Tax Officer, Vadapalani Assessment Circle, Chennai* [2000] 119 STC 591 is that the relevant date, to be the date of filing of return or the return was due whichever is earlier alone be taken into consideration for the purpose of imposing any conditions. It is to be seen that as rightly pointed out by the learned Additional Government Pleader, the Tribunal in the said judgment excluded the judgment of the apex Court in *Hardeodas Jagannath Vs. State of Assam and Others*, : taking into consideration as the main question in the said judgment was related to extension of Assam Sales Tax Act to Shillong Administered Areas. The applicability of the amended provisions with reference to the payment of deposit as a pre-condition for appeal was not in fact put forth and decided in the judgment. As apparently, the very same Tribunal in yet another judgment in *Goodluck Agencies v. State of Tamil Nadu* [1999] 113 STC 122 has held that the right of appeal is not an inherent right and it is not also a fundamental right and the right of appeal is a mere creature of the statute and it is open to the Legislature which creates such a right to take away the same, if necessary. The Tribunal also observed that when return is filed, and the same is not accepted and the officer proposes to assess the dealer in a different way by issuing a pre-assessment notice, the lis

commences. But only when this difference of opinion takes the form of an assessment order, it can be said that the lis has actually taken a proper and legal form. Instead of leaving the matter in doubt or to the whims and fancies of the parties or the assessing authorities, it is proper to hold that the dispute between the parties commences only when an order of assessment is made. The above judgment would also indicate that this point was not put before the Tribunal and there was no decision on the said issue when the Tribunal rendered the order in Hugs Advertising Industries v. Commercial Tax Officer, Vadapalani Assessment Circle, Chennai [2000] 119 STC 591. This leaves the question as to the law laid down by the Supreme Court in Hardeodas Jagannath Vs. State of Assam and Others, : The Supreme Court while considering the applicability of the amendment Act with reference to the date on which the assessment orders are made held as follows :

"It was contended that the amendment came into force with effect from April 1, 1958, and it cannot be given retrospective effect so as to apply to assessment periods ending on September 30, 1956, March 31, 1957, and September 30, 1957. We are unable to accept this argument as correct because the assessments for these three periods were completed after the amending Act came into force, i.e., after April 1, 1958. The appeals against the assessments were also filed after the amendment."

9. In view of the law laid down by the Constitutional Bench judgment in Hardeodas Jagannath Vs. State of Assam and Others, : it is to be held that the date of assessment order is the relevant date on which the right of the parties to prefer the appeals are to be determined. It is not in dispute that the assessment orders in all the writ petitions have been made only after the Amendment Act No, 4 of 2000 had come into force on June 1, 2000, on which date, the petitioners in order to prefer an appeal shall deposit 25 per cent of the difference of the tax as assessed as a pre-condition for preferring appeal. In the absence of such deposit, the appellate authority cannot assume any jurisdiction for entertaining the appeal. In the event such appeals are entertained by the authorities without compliance of the pre-deposit, such act of the respondents would be considered outside the power of amended Section 34 of the Act.

10. In that view of the matter, I do not find that the impugned order of the respondents in W.P. No. 5391 of 2001 insisting the petitioner to deposit 25 per cent of the difference of tax as assessed would be considered as illegal. Accordingly, the writ petition has no merit and is liable to be rejected.

11. In view of the same reasons, a writ of mandamus prayed for by the petitioners in W.P. Nos. 4355 and 4356 of 2001 entertaining the appeal and dispose of the same by the respondents without insisting 25 per cent of the difference of tax cannot also be granted.

12. For all the reasons, the writ petitions fail and the same are dismissed. Consequently, connected W.M.Ps are also dismissed. No costs.