

(2013) 06 MAD CK 0094

In the Madras High Court

Case No : TC (Revision) . No. 386 of 2011

The State of Tamil Nadu

APPELLANT

Vs

Hotel Vasantham

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 17, 35, 36(6), 36(6)(a)

Citation : (2014) 69 VST 397

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : V. Haribabu Addl. Govt. Pleader, for the Appellant; Sivanandam, for the Respondent

Judgement

Chitra Venkataraman, J.—The above Tax Case Revision is filed at the instance of the Revenue as against the order of Sales Tax Appellate

Tribunal in respect of assessment year 1998-99. The above Tax Case Revision was admitted on the following substantial question of law:-

Whether in the facts and circumstances of the case, the Tribunal is right in law in entertaining the review application filed by the assessee u/s 36(6)

of the Tamil Nadu General Sales Tax Act, 1959, on the ground of subsequent letter received from Government of India?.

It is seen from the order passed by the Tribunal in C.T.A. No. 329/2001 dated 20.5.2002 that the assessment of the assessee was revised by the

Assessing Officer for the period from 21.7.98 to 31.3.99 assessing the turnover at 8% as against the claim for assessment at 2%. Having lost the

case before the Assessing Authority, the assessee contested case before the first Appellate Authority viz., Appellate Assistant Commissioner and

thereafter before the Tamil Nadu Sales Tax Appellate Tribunal on the levy at 8%

on the sale of food and drinks on the ground that the

communications granting star category to the assessee from 21.7.98 was served on the assessee only after 29.11.99 by the Director of Tourism

Department vide letter No. GO. II/MAS/HRACO/98 (TN) 425 dated 29.11.99. In the circumstances, the assessee pleaded for acceptance of the

star status to assess the turnover in the appropriate form. On a reading of the proceedings of the Director of Tourism Department dated 29.11.99,

it is evident that as requested by the assessee, the star category was granted to the assessee with effect from 21.7.98, it being the date of

application. In the background of star category granted with effect from 21.7.98, the liability at 8% on the taxable turnover was held justified.

Thus, the assessee's appeal was rejected by the Tribunal. Subsequently, the assessee filed review petition before the Tribunal in CTRA. No. 3/02.

The assessee sought for review on the ground that the star status of the assessee's hotel came into force during the assessment year 1999-2000

only and that the India Tourism (Chennai) had issued a letter dated 13.8.2002, changing the date to 13.10.99 for a period of three years instead of

21.7.98. Thus, the star hotel status had come into force with effect from 1999-2000 and hence, from the assessment year 1999-2000, the

assessee could be assessed at 8%. The assessee sought for review of the order of the Tribunal to reduce the tax to 2% on the disputed turnover.

2. Referring to the decision reported in Gollapudi Suryanarayana Chetty Vs. State of Tamil Nadu, on the scope of review, the Tribunal held that

when a subsequent decision of the High Court could not be treated as new and important fact, the review based on subsequent order would not

lie. But, as the prayer in the revision to review the earlier order was not based on any subsequent decision of any higher appellate forum, the

Tribunal considered that this was a new and important fact requiring review of the order and hence, the petition to review the order was

maintainable. Thus, as the review sought for was based on records which were not made available to the petitioner while passing of the order of

this Tribunal; hence, the claim of the assessee based on the order passed by the Department of Tourism granting the star status from the

assessment year 1999-2000 was to be taken note of, warranting the review of the order passed by the Tribunal. Aggrieved by this, the State is on

revision before this Court.

3. Learned counsel appearing for the assessee placed before this Court the order on granting star status from 13.10.1999 under proceedings

dated 13.8.2002 and submitted that the Tribunal had rightly taken note of the subsequent order which was not available at the time of Tribunal

passed order rejecting the assessee's appeal. Hence, no fault could be seen on this order. In this regard, he placed reliance on the decisions

reported in State of Kerala and another Vs. P.K. Syed Akbar Sahib, , Texmaco Ltd. and Another Vs. State of A.P. and Another, and British

Physical Lab India Ltd. Vs. State of Karnataka and Another, and submitted that when the section itself does not speak on restrictions to be read

into the scope of powers on review, subsequent development could not be held against the assessee and no limitation could be read into the

provision u/s 35 of the Act. In other words, even though the Department of Tourism had passed an order on 13.8.2002, subsequent to the passing

of the order by the Tribunal on 20.5.2002, considering the status of the assessee's hotel as star hotel for the subsequent year, the factual error was

rightly taken note of by the Tribunal to correct its order. In the circumstances, no exception could be taken to the order of the Tribunal reviewing

its order by allowing the assessee's appeal.

4. We do not find any ground to accept the submission of the learned counsel for the assessee. In the decision reported in State of Tamil Nadu Vs.

Sree Gounder and Co. , this Court considered the powers to review u/s 36(6)(a) of the Tamil Nadu General Sales Tax Act and held that the

review powers could be exercised only when new and important facts are discovered and such facts were not available at the time of disposal of

the appeal by the Tribunal. This Court further held that subsequent decision of the High Court could not be treated as a "new and important fact

so as to enable the exercise of power of review. This Court referred to the decision of Gollapudi Suryanarayana Chetty Vs. State of Tamil Nadu,

wherein it was held that review being a jurisdiction created under statute, the same can be exercised only within the parameters fixed by the statute

itself and not on general principles. A review petition cannot be converted into an appeal in disguise for a rehearing.

5. Admittedly, the first order of the Tribunal was passed on 20.5.2002, however,

subsequent thereto, the assessee admittedly received orders from the Tourism Department on 13.8.2002 changing the date of classification issued originally in its order dated 29.11.1999. Thus, amended classification granting star status from 13.10.99 for a period of three years came into existence long after the order of the Tribunal; thus this letter cannot be stated as a fact which was there already at the time when the Tribunal passed the order on 20.5.2002, which, the assessee could not place it before the Tribunal for its consideration. On the other hand, even going by the date of the proceedings of the Tourism Department dated 13.8.2002, it is evident that the assessee could not claim that the said orders was available at the time when the Tribunal passed order on 20.5.2002 and that it was not available with the assessee so as to place the same before the Tribunal. Thus, on the facts placed before this Court, which are very much available before the Tribunal, we have no hesitation in rejecting the plea of the assessee based on the decisions of the Apex Court reported in State of Kerala and another Vs. P.K. Syed Akbar Sahib, Texmaco Ltd. and Another Vs. State of A.P. and Another, and British Physical Lab India Ltd. Vs. State of Karnataka and Another, . The decisions of the Apex Court rests on the peculiar facts of those cases and hence, we do not find any ground to extend the benefit of those decisions to the assessee herein.

6. Learned counsel appearing for the assessee pleaded that when the star status had been assigned with effect only from the subsequent year 1999-2000, the factual error cause serious hardship to the assessee. Considering the limited scope of review, the only course available for the assessee is to move the Government for appropriate orders u/s 17 of the Tamil Nadu General Sales Tax Act. If and when the assessee makes any such application, it is for the Government to consider the same for giving necessary relief by taking note of the subsequent orders. In view of the above, the order passed by the Tribunal in CTRA. No. 3 of 2002 is set aside and the above Tax Case (Revision) is allowed. No costs.