

(2011) 07 MAD CK 0105

In the Madras High Court

Case No : Writ Petition (MD) No. 10947 of 2005

Tvl. Parachara Builders

APPELLANT

Vs

The Appellate Assistant Commissioner (CT) and The
Commercial Tax Officer

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0105

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

**Advocate : S. Karunakar, for the Appellant; D. Muruganandham, Addl. Govt.
Pleader, for the Respondent**

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner has invoked the writ jurisdiction of this Court praying for issuance of a writ in the nature of Certiorari

to quash the order, dated 09.08.2005 vide which an appeal filed by the Petitioner before the Appellate Assistant Commissioner(CT), Trichy was

ordered to be dismissed as barred by limitation.

2. The Petitioner filed an appeal against the orders of the Commercial Tax Officer of Srirangam Circle, dated 16.02.2005 for the assessment year

2002-2003 under the Tamil Nadu Government Sales Tax Act, 1959. The appeal was accompanied with an application for condonation of delay

of 22 days. The stand taken by the Petitioner was that a copy of the order for the assessment year was served on the Petitioner on 14.03.2005,

and an appeal could be filed on or before 13.04.2005, but because of the fact, that the proprietrix of the concern was ill and undergoing treatment,

she was unable to attend the routine, therefore the order escaped her attention

which which is the sufficient cause for condoning the delay of 22 days.

3. It was also pleaded that delay was for the reasons which were not under control of the Petitioner therefore the prayer was bona-fide.

4. Though the pleadings constitute sufficient cause for condoning the delay, however, the facts reveal that a copy of the assessment order was

served on the Petitioner on 24.02.2005 and the appeal, therefore could have been filed on or before 26.03.2005 and the delay was of 40 days.

The learned Appellate Authority in view of the statutory bar, declined to condone the delay, as under the statute, the Appellate Commissioner

could condone the delay of only 30 days and not beyond that.

5. The learned Counsel for the Petitioner vehemently contended, that though no fault can be found with the order passed by the appellate authority,

but, this Court in exercise of the jurisdiction under Article 226 and 227 of the Constitution of India, always condone the delay to give an

opportunity to the Petitioner to contest the appeal on merits.

6. The prayer made by the learned Counsel for the Petitioner is equitable and in the interest of justice. It is also supported by the law laid down by

this Court in the case of Tvl. Vigna Industries.vs. Appellate Assistant Commissioner(CT), Madurai South, CTO Building, Thangaraj Maaligai,

Madurai and another passed in W.P. No. 3137 of 2004, decided on 26.06.2006, wherein this Court held as follows:

14.00. In the above circumstances, I am of the opinion that a reasonable opportunity has to be given to the Petitioner to canvas his main case

before the first Respondent. As the first Respondent has no power to condone the delay beyond 60 days, the petition is dismissed and it is an

appropriate order and the order is not illegal. The maximum period of 60 days is applicable to the first Respondent and not to this Court. Hence,

the same is considered purely on the sole ground of giving an opportunity to Petitioner to canvass his case before first Respondent on merits. The

delay is condoned on payment of Rs. 3000/- by the Petitioner to the High Court Legal Service Committee within 10 days from the date of receipt

of this order and produce the receipt before the first Respondent in proof payment of cost of Rs. 3000/-.

7. For the reasons stated and in view of the settled law, the Writ Petition is

allowed, the impugned order is set aside. The delay in filing the appeal is condoned, subject to the payment of Rs. 5000/- as costs to be deposited to the Legal Services Authority, Madurai, within 15 days from today.

8. The Appellate Authority on proof of payment of cost, is directed to take up the appeal on file and decide the appeal on merits, in accordance with law. No costs.