(1992) 07 MAD CK 0018

In the Madras High Court

Case No : T.C. No. 923 of 1983 (Revision No. 336 of 1983)

V. Krishnaswamy Chettiar APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 22-07-1992

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12A, 14, 15, 32

Citation : (1992) 07 MAD CK 0018

Hon'ble Judges : Raju, J;K.S. Bakthavatsalam, J

Bench : Division Bench

Advocate : Miss Pushpa Jain, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

1. The revision is filed against an order of the Sales Tax Appellate Tribunal, Madras, dismissing the appeal filed by the assessee and affirming the

order of the Deputy Commissioner, holding that the revision filed by the petitioner is not maintainable before the Deputy Commissioner u/s 32 of

the Act.

2. The short point in this revision revolves on the amendment which came into force on November 1, 1982. In this connection, it is useful to quote

section 32 of the Tamil Nadu General Sales Tax Act, 1959, which originally stood, runs as follows :

32. Special powers of the Deputy Commissioner. - (1) The Deputy Commissioner may, of his own motion, call for and examine an order passed

or proceeding recorded by the appropriate authority u/s 4-A, section 12, section 14, section 15 or sub-sections (1) and (2) of section 16 and may

make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

Section 32 of the Act came to be amended with effect from November 1, 1982, to the following effect :

32. Special powers of the Deputy Commissioner. - The Deputy Commissioner may of his own motion, call for and examine an order passed or

proceeding recorded by the appropriate authority u/s 4-A, section 12, section 12-A, section 14, section 15, or sub-sections (1) and (2) of section

16 and if such order or proceeding recorded is prejudicial to the interests of revenue, may make such inquiry or cause such inquiry to be made,

and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such

order thereon as he thinks fit.

The petitioner filed a revision u/s 32 of the Act to the Deputy Commissioner on January 24, 1983, against the orders of the assessment made

under the Central Sales Tax Act, 1956, levying penalty u/s 10-A of the Act. The Deputy Commissioner rejected the petition, on the ground that

since the Tamil Nadu Act 22 of 1982 has come into force, the powers of revision by the Deputy Commissioner have been restricted enabling the

Deputy Commissioner to call for and examine the order passed by the lower authorities, only if the proceeding recorded is prejudicial to the

interest of the Revenue, and therefore, the Deputy Commissioner rejected the revision petition filed by the petitioner as not prejudicial to the

revenue. This has been affirmed by the Tribunal. Hence, the petitioner is before us.

3. After hearing the learned counsel for the petitioner and the learned Additional Government Pleader, we are of the view that the order of the

Tribunal is not sustainable in law. We find that the order of assessment has been passed on May 20, 1982, before the amendment came into force

and the amendment has come into force on November 1, 1982. So when the order of assessment was passed, the petitioner had a right of revision

to the Deputy Commissioner u/s 32 of the Act as it stood then. Since the amendment has come into force on and from November 1, 1982 it takes

away the right of the petitioner in moving a revision before the Deputy Commissioner. In such circumstances, we are of the view that the petitioner

had a right of filing a revision to the Deputy Commissioner on the date when the order came to be passed, and therefore, the order of the Tribunal is not sustainable in law. We are fortified in coming to this conclusion by a decision of the apex Court reported in Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh [1953] 4 STC 114. However in Ganesh v. State of Tamil Nadu [1988] 68 STC 84 a Division Bench of this Court, while considering the scope of amendment with regard to section 38 of the Tamil Nadu General Sales Tax Act read with Limitation Act, 1963, came to the conclusion that the proviso to section 38(1) of the Tamil Nadu General Sales Tax Act, restricting the power to excuse the delay in filing revision petition u/s 38 only up to a period of 45 days, is an express exclusion of section 5 of the Limitation Act. The Division Bench, in our view, has not considered this aspect of the matter, which we have considered supra, following the dicta laid down by the apex Court in [1953] 4 STC 114 [Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh].

4. In the result, the revision will stand allowed and the order of the Tribunal is set aside. The matter is remitted to the Deputy Commissioner for fresh disposal according to law, after due notice to the petitioner. No costs.

5. Petition allowed.