THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TAX REVISION CASE No.50 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The order under challenge in this Tax Revision Case was passed by the Sales Tax Appellate Tribunal (STAT), Visakhapatnam in T.A.No.323 of 2005 dated 14.11.2014. The revision petitioner herein preferred this appeal before the STAT against the order passed by the Appellate Deputy Commissioner (CT), Vijayawada on 31.08.2004 rejecting the petitioner's appeal at the stage of admission on the ground that it was barred by limitation.

Aggrieved by the order dated 23.07.2001 passed by the Commercial Tax Officer for the assessment year 1998-99 under the Andhra Pradesh General Sales Tax Act, (for brevity, 'the Act'), levying tax of Rs.10,00,466/- on a turnover of Rs.72,53,376/-, the petitioner herein preferred an appeal to the Appellate Deputy Commissioner. The Appellate Deputy Commissioner noticed that there was a delay of three years in filing the appeal. A notice was issued to the petitioner for hearing before admission on the question of delay. On receipt of the said notice, the petitioner entered appearance seeking to explain the delay. The appellate authority, however, held that he had the power to condone the delay only upto thirty days; he had no jurisdiction to condone the delay of more than thirty days; and, as the delay in preferring the appeal was above three years, the appeal was rejected. In further appeal, the STAT held that the assessment order dated 23.07.2001 was served on the petitioner on 30.07.2001 itself; he was, therefore, required to prefer an appeal under Section 19 (1) of the Act within thirty days therefrom; the appeal was not filed within the said period of limitation, but was filed only on 29.07.2004, and there was a delay of nearly three years in filing the appeal. The STAT noted the petitioner's contention that, though the assessment order was served on the petitioner on 30.07.2001, the person who received the order, and signed on the assessment order in token of its receipt, was not his authorized representative; and such service to an unauthorized person did not amount to a valid service. The petitioner further contended that, as the assessment order was not served on him personally, he had applied for a certified copy of the order; after it was received on 14.07.2004, he had preferred the appeal; the date of service of the order should, therefore, be taken as 14.07.2004; and, as he had preferred the appeal within thirty days from that day i.e. 29.08.2004, the appeal must be presumed to be filed within time.

In the order under appeal, the Tribunal noted that the appellant was a firm; from the endorsement made on the assessment order, it was evident that Sri B.Sreerammurthy had received a copy of the order, and had affixed his signature in token of its receipt on 30.07.2001; Sri B.Sreerammurthy, who received the said order, was none other than the Proprietor of the petitioner-firm; the fact that Sri B.Sreerammurthy was a Proprietor of the firm was not disputed by the petitioner; when the order was personally served on the Proprietor of the firm, it could not be said that he was not the authorized representative of the petitioner-firm or that there was no valid service of the order; as there was valid service of the order on the Proprietor of the Firm, limitation started thirty days thereafter; it did not commence from the date of receipt of the certified copy of the order subsequently on 14.07.2004; if 30.07.2001 is the starting point of limitation the appeal, which was filed on 29.07.2004, was barred by limitation; there was an abnormal delay of five years in filing the appeal; as per the first proviso to Section 19 (1) of the Act, the appellate authority lacked jurisdiction to condone the delay of more than thirty days; and the Appellate Deputy Commissioner had rightly rejected the appeal as it was barred by limitation. The Tribunal did not find any legal flaw or infirmity in the order of the Appellate Deputy Commissioner, and dismissed the appeal.

Before us Sri M.V.J.K.Kumar, learned counsel for the petitioner, would reiterate the very same submissions urged before the Tribunal. Learned counsel would further submit that this Court should have taken a lenient view and condoned the delay. While Section 19 (1) of the Act prescribes a time limit of thirty days, from the date of receipt of a copy of the order by the dealer, to prefer an appeal to the appellate authority, the proviso thereto confers a discretion on the appellate authority to condone the delay of upto thirty days, after expiry of the thirty day prescribed period for preferring an appeal, provided he is satisfied that the dealer had sufficient cause for not preferring the appeal within that period. It is only if the appeal had been preferred within thirty days, after expiry of the thirty days prescribed under Section 19 (1) of the Act for preferring the appeal, is the appellate authority empowered to condone the delay, that too if the dealer has shown sufficient cause for not preferring the appeal within the original period of thirty days. In the present case, the appeal was filed three years after the date of service of a copy of the order on 30.07.2001. The appeal preferred on 29.07.2004 was rightly rejected both by the appellate authority and the Tribunal as the Appellate Deputy Commissioner lacked jurisdiction to condone the delay beyond the extended period of thirty days as prescribed in the proviso to Section 19(1) of the Act. In any event, as is evident from the facts recorded by the Tribunal, the petitioner has not shown sufficient cause. Except to state that a copy of the order was not served on him, the petitioner has not sought to explain the delay in any other manner. As has been observed by the Tribunal, in the order under revision, a copy of the order was served on the sole Proprietor of the petitioner-firm i.e. Sri B.Sreerammurthy, and he had affixed his signature in token of receipt thereof on 30.07.2001.

Viewed from any angle, the impugned order passed by the STAT does not necessitate interference. The Tribunal is the final Court of fact and save a question of law, this Court would not exercise its revisional jurisdiction under Section 22 of the Act. No question of law arises for consideration in this revision.

The Tax Revision Case is, accordingly, dismissed. However, in the circumstances, without costs. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

11th February, 2016.
Tsy