

(1987) 08 MP CK 0021

**Madhya Pradesh High Court****Case No:** Miscellaneous Civil Case No. 102 of 1984

Shakti Bhandar

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

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**Date of Decision:** Aug. 26, 1987**Acts Referred:**

- Madhya Pradesh General Sales Tax Act, 1958 - Section 38(4)

**Citation:** (1987) 67 STC 452**Hon'ble Judges:** N.D. Ojha, C.J; K.K. Adhikari, J**Bench:** Division Bench**Advocate:** R.K. Samiya, for the Appellant; S.K. Dixit, Dy. A.G., for the Respondent

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**Judgement**

N.D. Ojha, C.J.

The Tribunal constituted under the M. P. General Sales Tax Act, 1958, (hereinafter referred to as "the Act") has referred the following question to this Court for its opinion :

Whether, on the facts and circumstances of the case, the Tribunal was justified in dismissing the second appeal holding that the date of presentation and not the date of posting is material for consideration of the limitation of the appeal ?

2. The facts in a nut-shell necessary for answering the aforesaid question are that the order of assessment passed by the Additional Sales Tax Officer, against the assessee was served on the assessee-applicant on 1st February, 1979. The period of limitation for preferring an appeal against the said order as contained in Section 38(4) of the Act is 30 days from the date of communication of the order against which the appeal is to be filed. The period of 30 days calculated from 1st February, 1979 was to expire on 3rd March, 1979. The assessee sent the memorandum of appeal to the Deputy Commissioner of Sales Tax, Sagar by registered post on 1st March, 1979. The registered letter containing the memorandum of appeal was received in the office of the Deputy Commissioner of Sales Tax on 6th March, 1979.

On being informed by the Deputy Commissioner of Sales Tax that the appeal filed by the assessee was beyond time, the assessee made an application on 18th August, 1980 for condonation of the delay. The appeal, however, was dismissed by the Deputy Commissioner of Sales Tax as barred by time vide order dated 30th August, 1980. He took the view that in sending the memorandum of appeal on 1st March, 1979, the assessee does not appear to have taken into consideration the normal time which a registered letter takes in reaching its destination and having sent the memorandum of appeal by registered post as late as on 1st March, 1979, the assessee could not expect the appeal to reach the appellate authority within limitation. Aggrieved by the aforesaid order of the Deputy Commissioner, Sales Tax, the assessee preferred an appeal before the Board of Revenue which constitute the Tribunal under the Act.

3. From a perusal of paragraph 2 of the order of the Tribunal it appears that the point which was urged on behalf of the assessee before the Tribunal was that since the assessee had sent the first appeal by a registered post on 1st March, 1979, it should be treated within time, even though it actually reached the appellate authority on 6th March, 1979. The Tribunal, however, repelled this contention relying on a decision of this Court in Harlal Vaishya v. State of M.P. 1982 J.L.J. 73. In that case on a difference of opinion between two learned Judges on the question as to whether the date on which the memorandum of revision u/s 39 of the Act read with Rule 57(4) framed thereunder was posted under a registered cover is relevant for purposes of computing the period of limitation or the date on which it was actually received in the office of the Revising Officer, the matter was referred to a third learned Judge and the decision on the basis of the view taken by the third Judge was that if a revision application sent by registered post reached the revising authority after the prescribed period, it would be barred by limitation and the date of posting is immaterial. 4. Thereafter an application was made before the Tribunal for referring four questions to this Court for its opinion, namely :

(i) Whether, as per facts found, the delay in appeal before the Deputy Commissioner of Sales Tax should have been condoned in the absence of any negligence or want of bonafide imputable to the applicant and the delay, if any, due to unavoidable circumstances which were beyond the control of the applicant ?

(ii) Whether, the expression "sufficient cause" to condone the delay should receive a liberal construction so as to advance substantial justice ?

(iii) Whether, the point in issue pertaining to "sufficient cause" for condoning the delay by the Board of Revenue remained unconsidered amounting to error of jurisdiction ?

(iv) Whether, the date of presentation of the appeal is the date of presentation and not the date of posting in the light of the admitted facts and circumstances of the case ?

The Tribunal, however, referred only one question to this Court for its opinion which has already been mentioned above, by its order dated 20th October, 1983. In paragraph 4 of this order also the Tribunal has pointed out that in the appeal, the assessee had urged that as the appeal was sent on 1st March, 1979, it should be treated as being in time.

5. In so far as the question which has been referred to us is concerned, we are of the opinion that in view of the decision of this Court in the case of Harled Vaishya 1982 J LJ 73 there cannot be any manner of doubt that the said question has to be answered in the affirmative. What has, however, been urged by the learned counsel for the assessee is that the real question which was for consideration before the Tribunal was as to whether the application filed for condonation of delay by the assessee did or did not make out sufficient cause and since the Tribunal did not advert to this question at all, this circumstance also have to be taken into consideration while answering the question referred to us.

6. As seen above, from the tenor of the judgment of the Deputy Commissioner of Sales Tax, the substance of which has already been referred to above, it is apparent that the Deputy Commissioner while dismissing the appeal was of the view that sufficient cause had not been made out for condonation of delay. It is true that no specific order was passed by the Deputy Commissioner of Sales Tax dismissing the application for condonation of delay, but when he observed that the assessee did not take into consideration while posting the memorandum of appeal in a registered cover on 1st March, 1979 the time which normally a registered letter takes in reaching its destination and further that having sent the memorandum of appeal as late as on 1st March, 1979 the assessee could not expect it to reach the appellate authority within limitation, it is apparent that he was not satisfied with the sufficiency of the cause for condonation of the delay.

7. As regards the submission that the question as to whether sufficient cause had or had not been made out for condonation of delay was not considered by the Tribunal, the learned counsel for the assessee has brought to our notice the memorandum of appeal before the Tribunal, ground No. 3, whereof was to the effect that explanation filed in response to show cause notice should have been considered. According to the learned counsel for the assessee it is by taking this ground that the plea that sufficient cause had been made out for condonation of the delay was raised before the Tribunal, but it was not considered.

8. As seen above, the appellate order passed by the Tribunal indicates that the only question before it was that it was the date of posting of the memorandum of appeal under registered cover which was relevant for computing the period of limitation. That order does not indicate that the question of the cause for condonation of delay being sufficient or otherwise was raised before the Tribunal. In [Tika Ram and Sons Ltd. Vs. Its Workman \(Bishamber Dayal\)](#), it was held that if a judgment was silent on a point, prima facie it would be legitimate to infer that the said point had not been

urged before the Tribunal concerned. In that case the point which was sought to be argued before the Supreme Court was that the question of jurisdiction was urged before the Tribunal, but it was not considered. With regard to this submission it was pointed out that prima facie it would be legitimate to infer that the question of jurisdiction had not been urged before the Appellate Tribunal; if it had been so raised, the Tribunal would have dealt with it. As regards the plea being raised in the memorandum of appeal, it would be useful to point out certain observations made by the Supreme Court in [Gauri Shanker Vs. Hindustan Trust \(Pvt.\) Ltd. and Others](#), . Wherein it was held in paragraph 9 of the report that-

It may be pointed out that raising grounds in the memorandum of appeal is not sufficient to show whether a particular point was actually argued or pressed before the court. If the court expressly says that only certain points have been argued and no other point has been argued the statement in the judgment has prima facie to be accepted as correct. It was open to the present respondent to file a proper affidavit preferably of his counsel who had argued the case along with the memorandum of appeal that such a point had been raised but the court recording the concession had done so either wrongly or under some misapprehension. No such affidavit was filed with the memorandum of appeal and therefore we find no force in the submission of Mr. Chagla that the question of notice had been raised at the time of arguments before the Rent Control Tribunal.

9. In the case of [Bank of Bihar Ltd. Vs. Mahabir Lal and Others](#), , it was held that where a statement appears in the judgment of a court that a particular thing happened or did not happen before it, it ought not ordinarily to be permitted to be challenged by a party unless of course both the parties to the litigation agree that the statement is wrong or the court itself admits that the statement is erroneous, and the remedy of a party aggrieved is by way of review.

10. The second appeal filed before the Tribunal in the instant case had been decided on 27th August, 1982 by Shri A. K. Chandra, Member, Board of Revenue. The application which was made by the assessee for referring the four questions to this Court is dated 20th November, 1982 and orders on this application were passed on 20th October, 1983 by a different Member, namely, Shri K. K. Sethi. No application in between appears to have been filed for review before Shri A. K. Chandra who had decided the second appeal stating that the question as to whether sufficient cause had been made out or not for condonation of delay was argued before him, but was not considered. As seen above, even in the statement of the case it has been stated in paragraph 4 that the argument raised before the Tribunal was that the date of posting the memorandum of appeal under registered cover should be treated as the relevant date. It is true that this order was passed by a different Member. In this connection it may be pointed out that in the absence of any affidavit having been filed indicating that the question of sufficiency of cause or otherwise for condonation of delay was urged before the Member who decided the second

appeal, it was not possible for his successor to ascertain as to whether this question had or had not been argued. There is one more circumstance which is of some significance. The assessee had made a prayer before the Tribunal to refer four questions to the High Court for its opinion, which have already been quoted above. The Tribunal referred only one out of the four questions to this Court. The result of the order of the Tribunal was that the application made by the assessee in so far as the prayer for first three questions is concerned, would be deemed to have been dismissed by the Tribunal. No application, however, was thereafter made to this Court for a direction being issued to the Tribunal to refer the first three questions also to this Court for its opinion.

11. As regards the submission made by the learned counsel for the petitioner that the question as to whether the Tribunal committed an error in not considering the sufficiency or otherwise of the cause for condonation of delay is also implied in the question referred to us, suffice it to say that if the question referred to us had been whether the appeal preferred by the assessee was within limitation or beyond limitation, it could perhaps with some justification be argued that the aforesaid question was impliedly involved. However, keeping in view the specific nature of the question which has been referred to us, it is not possible to take the view that the aforesaid question is also involved.

12. In view of the foregoing discussion and in view of the decision of this Court in the case of Harlal Vaishya 1982 J LJ 73, our answer to the question referred to us is that on the facts and circumstances of the case the Tribunal was justified in dismissing the second appeal holding that the date of presentation and not the date of posting is material for consideration of the limitation of the appeal.

13. In the circumstances of the case, there shall be no order as to costs.