

(2003) 08 MAD CK 0177

Madras High Court

Case No: Writ Petition No. 22710 of 2003 and W.P.M.P. No"s. 28080 and 28133 of 2003

S.S. Sharfudeen

APPELLANT

Vs

The Commercial Tax
Officer, Leigh Bazaar,
Assessment Circle,
Salem, The Appellate
Assistant
Commissioner (CT),
Salem and The
Registrar, Tamil Nadu
Taxation Special
Tribunal, Chennai

RESPONDENT

Date of Decision: Aug. 13, 2003

Acts Referred:

- Limitation Act, 1963 - Section 10, 11, 12, 13, 14
- Tamil Nadu General Sales Tax Act, 1959 - Section 31

Hon'ble Judges: B. Subhashan Reddy, C.J; A.K. Rajan, J

Bench: Division Bench

Advocate: M. Md. Ibrahim Ali, for the Appellant; T. Ayyasamy, Spl. G.P. (Taxes), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Subhashan Reddy, C.J.

In these writ petitions, a question arose as to whether Section 5 of the Indian Limitation Act can be invoked for the delay in filing an appeal before the Tamil Nadu Taxation Special Tribunal. The Taxation Special Tribunal was approached by way of appeal against the orders of the Appellate Assistant Commissioner. But there was a delay of 300 days. Holding that the Tribunal had jurisdiction to condone the delay only for a further period of 30 days beyond what was prescribed by Section 31 of the Tamil Nadu General

Sales Tax Act, the appeal was dismissed as time barred. We have heard the learned counsel appearing for the petitioner as also the learned Special Government Pleader appearing for the respondents. Mr. Mohammed Ibrahim Ali, learned counsel appearing for the petitioner in both the writ petitions submits that a Division Bench of this Court in *M/s. Devi Printers -vs- Commercial Tax Officer and others* in W.P.Nos.21179 and 21180 of 2002 by order, dated 18.6.2002 condoned the delay, even beyond the period of 30 days by awarding costs.

2. The learned Special Government Pleader on taking notice on behalf of the respondents has relied upon two other division Bench judgments of this Court, one in *Indian Coffee Worker's Co-op. Society Ltd. -vs- Commissioner Of Commercial Taxes* reported in 2002 (I) C.T.C.406 as also *Qoantas Engineers Promoters (p) Limited vs. Tamil Nadu Taxation Special Tribunal and others* reported in (2003) Vol.131 STC 529, which have held, while dealing with Section 31 of the Tamil Nadu General Sales Tax Act, that there is no power to condone the delay u/s 5 of the Indian Limitation Act, as it is only 30 days, for which the Legislature has given power to the Tribunal to condone the delay and not beyond that, and the power which is not given under the statute cannot be exercised by the Courts. It is true that in the decision cited 1st supra, namely, *M/s. Devi Printers -vs- Commercial Tax Officer and others*, the delay was condoned, but the provision contained in Section 31 of the TNGST Act was not brought to the notice of the Court and there was no interpretation revolving around the impact of the prescription of only 30 days for the purpose of condoning the delay. Elaborate arguments were advanced in the decisions cited 2nd and 3rd supra and further in the above two judgments, the Supreme Court judgment rendered in *Union Of India -vs- M/s. Popular Construction Company* reported in 2001 (4) C.T.C.213 has been followed. In [Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker](#), it was held that if the application of Limitation Act is not specifically excluded, then automatically Section 29(2) of the Limitation Act comes into operation and the provisions contained in Sections 4 to 24 of the Limitation Act are applicable, and in that event, Section 5 of the limitation Act can be availed of not only before the Courts but also before the Tribunals and all other authorities, which exercise the judicial and quasi-judicial functions, but the said proposition has to be understood in the context of what is stated in the later Supreme Court judgment in *Union of India -vs- M/s. Popular Construction Co.*, cited 4th supra that prescription of the period of limitation under Special Law with power to condone the delay only for a specified period amounts to express exclusion of Limitation Act. In view of this later judgment of the Supreme Court and the consequent two Division Bench judgments of this Court we have got no alternative but to dismiss the writ petitions, holding that there is no power for condonation of delay beyond 30 days of what is prescribed in Section 31 of the TNGST Act. Accordingly, both the writ petitions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed. No costs.