

## Taherali Industries and Project (P) Ltd. Vs Commercial Tax Officer-II

**Court:** Madras High Court (Madurai Bench)

**Date of Decision:** Aug. 24, 2005

**Acts Referred:** Tamil Nadu General Sales Tax Act, 1959 " Section 31

**Citation:** (2006) 147 STC 249

**Hon'ble Judges:** S. Sardar Zackria Hussain, J; P. Sathasivam, J

**Bench:** Division Bench

**Advocate:** R. Viduthalai, for M.S. Gopinathan, for the Appellant; T. Mahendran, Special Government Pleader, for the Respondent

**Final Decision:** Dismissed

### Judgement

P. Sathasivam, J.

The above writ appeal has been filed against the order of the learned single Judge dated July 28, 2005 passed in W.P.

No. 6323 of 2005 in and by which, the learned Judge, by drawing the attention that there is an effective remedy by way of an appeal and without

exhausting the appeal provision, the writ petition is not maintainable, has dismissed the same.

2. It is not in dispute that against the impugned order of assessment, there is an effective remedy, viz., by way of an appeal u/s 31 of the Tamil

Nadu General Sales Tax Act, 1959. Mr. R. Viduthalai, learned Senior Counsel appearing for the appellant, by drawing our attention to the

decision of this Court dated July 21, 2005 rendered in Writ Appeals Nos. 1383 and 1384 of 2005 Royal Insulation (P) Ltd. v. Commercial Tax

Officer [2006] 147 STC 246 would request that in the light of the direction therein and the fact that there is no provision for waiver of the

compulsory deposit for availing the appeal provision, this Court could exercise its discretionary power.

3. It is brought to our notice that though the appellant has filed an appeal before the appellate authority, in view of the fact that the appellant has not

complied with the statutory provision, viz., deposit of 25 per cent of the admitted (?) amount, the appeal has not been entertained. When there is

no specific provision enabling the authority to waive or consider the grievance of the party/parties, we are of the view that there cannot be any

direction to accept or consider or follow the other mode. So long as there is no provision for waiver, the authority concerned is justified in insisting

the deposit before taking up the appeal. Even the decision relied on in para 2 is only observation/suggestion to the Government. Till necessary

provision is made by the Government, no contra direction can be issued.

4. Though the learned Senior Counsel for the appellant has prayed that the appellant may be permitted to furnish bank guarantee instead of deposit

of 25 per cent of the admitted (?) amount, here again, admittedly, there is no provision for the same and it is not in dispute that furnishing the bank

guarantee is not a substitute for depositing the required amount, as per the statute. As said earlier, in the absence of any such provision, we are

unable to accept the claim made by the learned Senior Counsel for the appellant and we do not find any error or infirmity in the order of the

learned single Judge.

5. Accordingly, the appeal fails and the same is dismissed.

6. Consequently, W.A.M.P. No. 467 of 2005 is also dismissed.

7. No costs.