

**(2011) 07 MAD CK 0365**

**Madras High Court**

**Case No:** Writ Petition (MD) No. 615 of 2006

Shri Renuga Refineries Private  
Ltd.

APPELLANT

Vs

The Deputy Commercial Tax  
Officer-I

RESPONDENT

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**Date of Decision:** July 8, 2011

**Hon'ble Judges:** Vinod K Sharma, J

**Bench:** Single Bench

**Advocate:** Thiyagarajan, for the Appellant; D. Muruganandham, A.G.P., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The Petitioner has approached this Court to challenge the order passed by the Deputy Tax Officer, Theni, dated 22.12.2005.

2. The impugned order reads as hereunder:

ORDER:

As per the orders of the Hon'ble High Court, Madras in the reference 1st cited, the dealers have obtained the documents from this office on 19.04.2005. Even though lapse of 8 months time, the dealers have not filed any objections so far.

Hence it is hereby ordered the assessment under the CST Act 1956 for the year 1995-96 already made will stands good.

3. The case of the Petitioner in the writ petition, is that the assessment order of the Deputy Commercial Tax Officer, was challenged by the Petitioner in appeal. Though, the appeal was accompanied by the application for condonation of delay, which was permissible under the Act, the appellate authority wrongly returned the appeal

treating it is to be barred by limitation, without adjudicating as to whether sufficient cause was shown for condoning the delay in filing the appeal.

4. The Petitioner thereafter challenging the order in this Court in W.P. No. 7947 of 1997. During the pendency of the writ petition, it was revealed that the number of documents, on which, the reliance was placed were not given to the Petitioner.

5. This Court, therefore, held that the order of the Deputy Commercial Tax Officer, was passed in violation of principles of natural justice.

6. Consequently, the assessment order was set aside and the Deputy Commercial Tax Officer was directed to hand over all the documents to the Petitioner and thereafter pass fresh order. The Petitioner was also given liberty to file objections against the proposed assessment. The direction of this Court was, that the objections were to be filed within fifteen days on receipt of the documents. As already noticed, the Deputy Commercial Tax Officer was directed to pass fresh orders within 30 days of the date of receipt of objections.

7. In pursuant to the order passed by this Court, a notice was issued to the Petitioner, on 05.04.2005, calling upon the Petitioner to collect the papers. In response to the letter, the Petitioner wrote back on 16.05.2005 requesting to fix the time for taking the xerox copies of the documents. The impugned order shows, that the documents were handed over to the Petitioner on 18.04.2005.

8. This fact is disputed by the learned Senior counsel for the Petitioner. Therefore, in this writ disputed facts are raised, which cannot be gone into in this writ petition.

9. The main contention of the learned Senior Counsel to challenge the impugned order is that the Deputy Commercial Tax Officer, Theni, could have not restored the order, which stood quashed by this Court, as the assessing Officer was required to pass fresh orders, in accordance with law.

10. This plea, though looks prima facie attractive, but on the facts and circumstances of the case, it cannot be sustained.

11. The only ground for setting aside the order by this Court, was that the Petitioner was not supplied with the necessary documents, which resulted in prejudice to the Petitioner, as he was denied the right to file comprehensive objections to the proposed assessment.

12. Once in spite of opportunity having been provided to file objections, the Petitioner failed to file objections. It was always open to the authority to reiterate the earlier order passed, which in law would amount to fresh order. It cannot therefore be said to be in violation of the orders passed by this Court.

13. This Court is not going into the merits of the order passed, for the simple reason that the Petitioner has a statutory remedy of statutory appeal against the impugned order, as also other remedies under the Act.

14. The disputed question of fact cannot be gone into in the writ jurisdiction.

15. Consequently, the Writ Petition is dismissed with liberty to the Petitioner to avail the statutory remedy of appeal in accordance with law, if so advised.

16. However, keeping in view the fact, that the writ petition was admitted and is pending in this Court, since, 2006, the liberty given to the Petitioner to file an appeal within one month of the date of receipt of certified copy of the order.

17. In case, any such appeal is filed within the period stipulated, the same be disposed of on merit and in accordance with law by treating it to be within limitation. No costs.

18. Consequently connected miscellaneous petition is closed.