

SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)

**Unity Wire Industries, Sec'bad Vs. Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad**

**Unity Wire Industries, Sec'bad Vs. Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad**

**SooperKanoon Citation :** [sooperkanoon.com/428199](http://sooperkanoon.com/428199)

**Court :** Andhra Pradesh

**Decided On :** Dec-15-1998

**Reported in :** 1999(1)ALD634; 1999(1)ALT475

**Judge :** P. Venkatarama Reddi, ACJ and; Bilal Nazki, J.

**Acts :** Andhra Pradesh General Sales Tax Act, 1957 - Sections 19, 20(1), 21(2), 22 and 23

**Appeal No. :** SA No. 36 of 1998

**Appellant :** Unity Wire Industries, Sec'bad

**Respondent :** Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad

**Advocate for Def. :** Spl. Government Pleader for Taxes

**Advocate for Pet/Ap. :** Mr. P. Sreenivas Reddy, Adv.

**Judgement :**

ORDER

P. Venkatarama Reddi, ACJ

1. These Special Appeals preferred by the assessee under Section 23 of the A.P. General Sales-tax Act arise out of the order of the Commissioner of Commercial

Taxes passed under Section 20(1) of the Act. The relevant assessment years are 1983-84, 1984-85, 1988-89, to 1991-92. Against the assessments made for these years, the appellant preferred appeals before the Appellate Deputy Commissioner, Ptinjugutta, Hyderabad seeking relief on the sale turn-over of wires drawn out of tax suffered wire rods. The relief was granted based on the decision of the Supreme Court in *Telangana Steel Industries and others v. State of Andhra Pradesh and others*, : 1994(73)ELT513(SC) .

2. The appeals were filed with enormous delay. The appeals for the years 1983-84 and 1984-85 were preferred on 28-4-1990, whereas the appeals for the other four years were filed on 2-4-1994 and 6-4-1994. The delay is about three years for the assessment years 1983-84, 1984-85, 1988-89 and 1989-90. The appellate authority condoned the delay by a cryptic order after hearing the arguments of Counsel. The following endorsement is found on the file:

'Condoned. Admitted & heard the appeal.'

3. The petitions for condonation of delay were not filed at the time the appeals were filed on 28-4-1990 against the assessments made for the years 1983-84 and 1984-85. Petitions supported by affidavits were filed only on 8-4-1994 along with the petitions relating to appeals for remaining years. The reason given in the affidavit is that the dispute was pending before the Supreme Court, which ultimately held in *Telangana Industries's case (supra)* on 4-3-1994 that wires cannot be subjected to tax, if the wire rods from which they were drawn have already suffered tax. The appellant stated in the affidavit that the appeal was filed on the strength of the judgment of the Supreme Court. That is all the explanation given for long delay. The Appellate Authority having taken the appeals on file granted the relief based on the decision of the Supreme Court in *Telangana Industries's case (supra)*. The Commissioner revised and set aside the appellate order. The Commissioner held, inter alia, that there was no justification for condoning long delay, moreso when the assessee passed on the tax burden to their buyers. Questioning the order of the Commissioner, the present appeals are filed.

4. In a batch of Special Appeal Nos.34 of 1998 and batch in which judgment has been delivered today, we have taken the view that it was incumbent on the Appellate authority to pass a reasoned order after applying its mind to the question whether the reasons given by the assessee constituted sufficient cause for not preferring the appeal within time and the appellate authority failed to discharge this duty. We have further held that the consequential order passed on merits also becomes illegal. We have further held that the Commissioner's revisional order cannot also be sustained for the reasons given therein. Hence, we set aside both the others i.e., the revisional order of the Commissioner as well as order of the Appellate deputy Commissioner and directed the appellate authority to consider the question of condonation of delay afresh and deal with the appeals accordingly. These appeals could also have been disposed of in a similar manner, but for the fact that there are distinguishing features which merit outright rejection of the four appeals, viz., Special Appeal Nos.36, 50, 51 and 52 of 1998.

5. Unlike the appellants in Special Appeal No.34 of 1998 and Batch, the appellants did not question the levy of tax on the wires drawn out of tax-paid wire rods at any time earlier. The other assesseees similarly situated i.e., appellants in Special Appeal No.34 of 1998 and batch filed the writ petition questioning the levy in the first instance and having failed in the writ petitions, carried the matter in appeals to the Supreme Court and the Supreme Court allowed the appeals in favour of the appellants holding that the levy of tax on oil wires was illegal. The appellants thereafter filed appeals and on the strength of the appellate orders, refund was obtained. Admittedly, the appellant herein-Unity Wire Industries was not a party to the writ petitions or the appeals filed before the Supreme Court. It is not the case of the appellant that he was unaware of the legal proceedings and the controversy raised therein. It is an admitted fact that the partner in Hyderabad Wire and Allied Products (appellant in Special Appeal Nos.34, 46, 47, 49, 53 and 54 of 1998) and the partner in Unity Wire Industries are brothers. There is absolutely no explanation as to why the assessments were not contested till the date of filing appeals three years later. Further, no explanation is forthcoming from the appellant as to why he filed two appeals on 28-4-1990 (without any petition for condonation of delay), remained silent thereafter till the Supreme Court gave its verdict. In vaguest possible terms, it was stated in the affidavit that the matter was

pending before the Courts in India and before the Supreme Court. The reasonable inference to be drawn is that the appellant was content with the benefit of set-off of tax granted by the State Government soon after the adverse decision of the High Court and proceeded on the basis that no exception ought to be taken to the levy of tax on wires and accordingly conducted himself by collecting the tax and paying it to the State. Moreover, when he could file two appeals in April, 1990 in respect of two assessment years despite the pendency of appeals in the Supreme Court, what made him not to choose similar course of action in regard to other assessment years? The affidavit filed by the appellant before the Appellate Deputy Commissioner is bald and does not explain any of these enigmas. The conduct of the appellant is not conducive to the plea of sufficient cause. We do not also think that in the circumstances of the case, a case of mistake of law is made out. The observations and the decision of the Supreme Court in *Mafatlal Industries Ltd. v. Union of India*, : 1997(89)ELT247(SC) , are quite apposite in this context. Though the observations were made in the context of a claim for refund of tax illegally collected, they have a bearing on the question of sufficient cause as well. At page 609, it was observed:

'But according to the present practice, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law. The incongruity of the situation needs no emphasis. And all this because another manufacturer or assessee has obtained a decision favourable to him. What has indeed been happening all these years is that just because one or a few of the assessees succeed in having their interpretation or contention accepted by a High Court or the Supreme Court, all the manufacturers/assesseees all over the country are filing refund claims.....'

6. The decision of this Court in *State of A.P. v. Venkataramana Chuduva Merchant*, : [1986]159ITR59(AP) , has been strongly relied upon before the Commissioner as well as before us. Our attention has been drawn to the following passage at page 185:

'The other remedy open to the asscssees is to prefer an appeal or revision, as the case may be, along with a petition for condoning the delay, on the ground that in view of the position of law obtaining on the date of receipt of the impugned order, they decided not to file an appeal; but, since the subsequent decision establishes the said assumption to be incorrect, and further that the tax has been illegally collected from them, they are now preferring the appeal and that the same should constitute 'sufficient cause' within the meaning of the proviso to subsection (1) of Section 19 or sub-section (2) of Section 21, or the proviso to subsection (l) of Section 22, as the case may be. The observations in Kamala Mills Ltd. v. State of Bombay, (1965) 16 STC 613 (SC) make this position clear.'

7. The view taken by the Division Bench in the afore-mentioned case was largely influenced by the observations in Kamala Mills Ltd v. State of Bombay, (1965) 16 STC 613 (SC). These are the relevant observations:

'It is thus clear that the appellant could have either appealed or applied for revision and prayed for condonation of delay on the ground that the mistake which was responsible for the recovery of tax illegally levied, was discovered on 6-9-1955, because such a plea would have been perfectly competent under Section 22-B. Section 22-B empowers the prescribed authority to extend the period of limitation on the ground that the applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period.'

8. Coming to the facts of the present case, as already observed, there was no averment or assertion before the appellate authority that the appellant was labouring under a mistake of law and the mistake was discovered only after the Supreme Court rendered the decision on 4-3-1994. It was only before the Commissioner that such a plea was raised for the first time. Apart from the fact that there was no definite averment before the appellate authority as regards the mistake of law, as observed supra, there could be no scope for any such mistaken impression. Similarly situated assesseees, including the appellant's brother doing business in the same area (as seen from the record), were agitating the matters before the High Court and the Supreme Court. The I appellant, for reasons best known to him, did not take any steps to contest the legality of the levy on wires

drawn out of tax-suffered wire rods. It is not even the appellant's case that he did not file appeals earlier as he thought it was a futile remedy and that the appeals were filed soon after coming to know of the decision of the Supreme Court. It is not averred in the affidavit filed before the Appellate Dy. Commissioner that in view of the position of law obtaining on the date of the assessment, the appellant decided not to file an appeal. Moreover, the appellant preferred appeals for two assessment years three years later without filing a petition for condonation of delay and did not take similar action for the other years. The preferment of appeals for two years would, prima facie, indicate that the appellant was not labouring under any mistake of law. These facts and features present in the instant case unerringly indicate that the ratio of the decision in State of A.P. v. Venkata Ramana Chuduva Merchants (supra) has no application, even assuming that the observations made therein still hold the field in view of the decision of the Supreme Court in Mafatlal Industries's case (supra). In our view, sufficient cause has not been made out for preferring the appeals belatedly and the appellate authority ought to have rejected such appeals in limine.

9. For the reasons stated above, we have come to the inevitable conclusion that the appellate authority was not legally justified in condoning long and inordinate delay, that too by a cryptic order and consequentially the appellate order passed on merits granting the relief to the appellant is vitiated by illegality and hence liable to be set aside. The action taken by the Commissioner is, therefore, in conformity with law, though for some-what different reasons.

10. Appeal Nos.36, 50, 51 and 52 of 1998 are, therefore, dismissed. No costs.

11. As far as Appeal Nos.38 and 44 of 1998 are concerned, for the same reasons stated in Special Appeal No.34 of 1998 and batch, the revision is time barred. Hence, the impugned orders of the Commissioner for the years 1990-91 and 1991-92 cannot be sustained. The two appeals are accordingly allowed. There shall be no order as to costs.