K. Sengodan and Co. Vs. State of Madras

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Court : Chennai

Decided On : Jun-28-1967

Reported in : [1967]20STC415(Mad)

Judge : Veeraswami and ;Ramaprasada Rao, JJ.

Appeal No. : Tax Case No. 241 of 1964 (Appeal No. 10)

Appellant : K. Sengodan and Co.

Respondent : State of Madras

Advocate for Def. : K. Venkataswami, Adv. for Additional Government Pleader

Advocate for Pet/Ap. : R.S. Venkatachari, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Veeraswami, J.

1. The petitioner who is the assessee was a dealer in groundnut oil at Namakkal. For the year 1958-59 he claimed rebate in respect of a turnover of Rs. 43,433 which he was entitled to under the Madras General Sales Tax Act and the Rules made thereunder. But the assessing authority disallowed the rebate on the ground

that the petitioner delayed submission of returns in Form A-9 for the months of August and September, 1958, and March, 1959. The delay was one day in one case and two days in the two other cases of monthly returns. But the tax referable to these months was paid within the prescribed time. On this ground the Appellate Assistant Commissioner made the following direction :-

As the delay is only very short the appellants should apply to the Commercial Tax Officer of the district who is competent to condone delays under Rule 18 within ten days of the receipt of this order. On such condonation of the delay the Deputy Commercial Tax Officer will further grant rebate for a total sum of Rs. 1,68,531 for the whole year.

2. This order was reversed by the Board of Revenue in exercise of its powers of suo motu revision. This was on the ground that the petitioner failed to appear on the day fixed for the hearing before it and that on a search of the records it was found that no application for excusing delay was filed by the petitioner.

3. Sub-rule (3) of Rule 18-A of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is as follows:

(3) If any manufacturer of groundnut oil registered under Sub-rule (1) submits the application in Form A-9 referred to in Sub-rule (2) after the 25th day of the month, or if he omits to furnish therein any of the particulars required by that form, the Commercial Tax Officer concerned may, in his discretion, condone the delay up to a period of 5 days, or omission where there is no mala fide intention, or both, provided that such manufacturer of groundnut oil has maintained a true and correct account of his business showing all the particulars prescribed in Form A-9.

The contention before us is that the sub-rule does not require an application and therefore the Board's order cannot be sustained. We are inclined to accept the argument. What the sub-rule does is to confer power upon the Commercial Tax Officer to excuse delay in his discretion; but the discretion has got to be exercised in the manner provided by the sub-rule. That is to say, he can decline to condone the delay only if he finds that the delay is with a mala fide intention or the assessee concerned has not maintained true and correct account of his business showing all the particulars prescribed in Form A-9. It is a genera] rule of law that where a power is vested by a statute in a public authority with a discretion restricted or otherwise, it is meant for exercise and the exercise of the power cannot be refused either capriciously or arbitrarily. The officer can refuse to exercise the power only if the conditions for the exercise are not fulfilled or satisfied. Sub-rule (3) does not contemplate that unless the concerned assessee makes an application, the Commercial Tax Officer is at liberty to refuse to condone the delay, though the conditions therefor are satisfied. We are of opinion, therefore, that in so far as the Appellate Assistant Commissioner and the Board proceeded upon the view that an application to exercise the power to condone delay was necessary, they were in error. It is the duty of the Commercial Tax Officer to condone the delay himself unless he thinks that the delay was with a mala fide intention or the assessee had not maintained true and correct accounts in relation to the particulars required in Form A-9.

On that view the petition is allowed and the Board's order is set aside with a direction that it may dispose of the suo motu revision afresh in the light of this judgment. There will be no order as to costs.