

Important Judgment

**WRIT PETITION NO. 2150 OF 2005
ARISING OUT OF AMNESTY SCHEME, 1999**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2150 OF 2005**

M/s. Rajendra Mechanical Industries)
Ltd., an existing company within the)
meaning of Companies Act, 1956, having)
its registered office at Plot No. 11,)
Cama Industrial Estate. Goregaon (E),) . . . Petitioner
Mumbai - 400 063

V/S.

1. The Maharashtra Sales Tax)
Tribunal, 7th Floor, Vikrikar)
Bhavan, Mazgaon, Mumbai - 400 010)
2. The State of Maharashtra,)
Mantralaya, Mumbai - 400 032)
3. The Commissioner of Sales Tax,)
Maharashtra State, 8th Floor,)
Vikrikar Bhavan, Mazgaon,)
Mumbai - 400 010) . . . Respondents.

Mr. C. B. Thakar for petitioners.

Mr. Rajiv Chavan, A.G.P. for respondents.

CORAM : V.C. DAGA AND J.P. DEVADHAR, JJ.
DATED 9TH SEPTEMBER, 2005.

JUDGMENT (PER V.C. DAGA, J.)

1. Rule, returnable forthwith. Mr. Rajiv Chavan, AGP waives service on behalf of the respondents. Heard finally by consent of the parties.

The facts

2. Petitioners had filed First appeal before the Dy. Commissioner of Sales Tax (Appeals) II, Mumbai against the order of assessment dated 11-11-1996 Passed by the assistant Commissioner of Sales Tax (Asstt) B-108 under the provisions of the Central Sales Tax Act, 1956. The petitioner was unsuccessful in the said appeal. Consequently, petitioner preferred Second Appeal against the above order before the Maharashtra Sales Tax Tribunal, Mumbai ('the Tribunal' for short).

3. During the pendency of the aforesaid appeal, the Government of Maharashtra issued a Government Resolution dated 25-4-1999 declared Amnesty Scheme known as "Maharashtra Rajya Karvivad Nivaran Yojana, 1999" ('MKNY Amnesty Scheme' for short).

4. The Commissioner of Sales Tax pursuant to clause 5 of the MKNY Amnesty Scheme issued Trade Circular No. 12T of 1999 dated 10-5-1999 along with Circular bearing No. 14-T of 1999 dated 10-5-1999. Clause (X) of the Circular dated 10-6-1999 reads as under:-

"(x) Cases pending in Appeal.

- (a) Xerox copy of the letter addressed to Appellate Authority for withdrawal of the appeal unconditionally shall be enclosed with the application form.
- (b) For availing benefit under MKNY if the appeal is withdrawn and subsequently for any reason the benefit under MKNY is not granted, the dealer can apply for restoration of appeal.

5. Petitioner to claim the benefit of MKNY Amnesty Scheme, on 26-7-1999; applied to the Maharashtra State Tribunal for withdrawal of the Second Appeal pending before the Tribunal and on 31-7-1999 applied for availing benefits of the Amnesty Scheme. During the pendency of this application moved on 31-7-1999 the Sales Tax Tribunal by an order passed in the Second Appeal allowed the petitioner to withdraw its appeal. Thus, the Second Appeal came to be dismissed as withdrawn. The petitioner thereafter entered into the correspondence with authorities designated under MKNY Scheme for allowing the benefits of the Amnesty Scheme and pursued the matter right up to July 2003. However, the petitioner could not get success in claiming benefits of the MKNY Amnesty Scheme.

In other words. application made by the petitioner came to be rejected and the benefits of the Scheme were denied to the petitioner, which the petitioner came to know finally in the month of July, 2003.

6. Petitioner after having known finally that he was not going to get the benefits of MKNY Amnesty Scheme applied on 5-9-2003 for restoration of the Second Appeal to the Sales Tax Tribunal. The Tribunal finding the application for restoration beyond the period of 30 days from the date of the order allowing withdrawal of the appeal, rejected the application for restoration vide its order dated 21-4-2005. The aforesaid order is the subject matter of the challenge in this petition filed under Article 226 of the Constitution of India.

Rival submissions

7. The learned counsel appearing for the petitioner submits that in order to have proper implementation of the MKNY Amnesty Scheme Trade Circulars were issued from time to time in exercise of powers conferred under the said Amnesty Scheme. One of the clauses of the Trade Circular as extracted hereinabove, specifically permits the applicant to apply for restoration of the appeal in the event benefits of the Scheme are denied to him. In that view of the matter, the learned counsel for the petitioner submits that the State/Sales Tax department ought not to have opposed its application for restoration of appeal. In the submissions of the learned counsel for petitioner, the contentions raised by the State Government while opposing the prayer for restoration of the appeal were contrary to the declared policy of the State. He thus, submits that so far as Rule 61 of the Bombay Sales Tax Rule, 1959 is concerned, the said rule could not have been pressed into service to defeat the prayer of the petitioner seeking to restore appeal which was withdrawn to seek benefits of the Amnesty Scheme. He further submits that appeal was never dismissed by Tribunal in default nor it was decided ex parte, as such Rule 61 has no application. He further submits that the prayer for restoration of appeal was pursuant to the Amnesty Scheme floated by the State Government, wherein no specific time limit was prescribed, therefore, Court should only examine whether the prayer for restoration was made within a reasonable time or not. He, thus, submits that the impugned order of the Tribunal refusing to restore appeal to its file is liable to be set aside.

8. Per contra, learned A.G.P. appearing for the State (Sales Tax department) while countering the aforesaid submissions urged that Trade Circulars issued from time to time pursuant to the powers given in the Scheme will have to be read with the Rules of 1959 in general and Rule 61 in particular in the facts and circumstances of the case. He, thus, submits that the application for restoration of the appeal not

being made within a period of 30 days, the Tribunal was perfectly justified in rejecting the application for restoration. He thus prayed for rejection of this petition.

Consideration

9. Having heard the rival parties, without going into the intricacies of the legal submission advanced, it is needless to mention that pursuant to the MKNY Amnesty Scheme, the present petitioner had withdrawn the appeal. The benefits of the scheme could not be extended to the petitioner with the result the petitioner was justified in moving an application for restoration of the appeal which was allowed to be withdrawn by the Tribunal. The Trade Circular issued did not provide for any time limit for moving the restoration application to restore the appeal. Limitation of 30 days prescribed under Rule 61 of the Bombay Sales Tax Rules, 1959 apply to cases where the appeal is dismissed or decided ex parte on account of the failure on the part of the appellant to appeal before the Tribunal on the appointed date and not cases where the appeal is allowed to be withdrawn for availing the benefit of the Amnesty Scheme. Under these circumstances, considering the MKNY Amnesty Scheme and the Trade Circulars issued thereunder, we do not think that the Tribunal was justified in relying upon the Rule to non suit the petitioner.

10. Even otherwise, considering the interest of justice, the prayer of the petitioner for restoration ought to have been allowed by the Tribunal. A dealer or a person like the petitioner cannot be told that under the Amnesty Scheme he will have to withdraw the appeal and on refusal to grant benefits, he will not be entitled to pursue his appeal. Assessee cannot be hit in both ways. In this view of the matter, we are of the opinion that the impugned order is unsustainable and liable to be quashed and set aside. The application for restoration which was filed by the petitioner before Tribunal is liable to be allowed. Appeal is liable to be restored to the file of the Tribunal with directions to decide it on its own merits.

11. In the result, the petition is allowed. The impugned order dated 21-4-2005 incorporated at Exhibit-L of the petition is set aside. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(V.C. DAGA. J.)

(J.P. DEVADHAR, J.)

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**BEFORE THE STATE INFORMATION COMMISSION,
MAHARASHTRA – APPEAL UNDER SECTION 19(3) OF RTI ACT, 2005**

Appeal No. 2007/1387/02

Shri Kishor Totaram Lulla,
Abhyankar Complex, Amrai Road,
Sangli 416 416.

..... Appellant

vs.

Appellate Officer & Commissioner
Sales Tax (C) Enforcement,
Mazgaon, Mumbai 400 010.

.... Respondent

GROUND

Shri Kishor Lulla of Sangli had sought the following information from the PIO in the office of the Sales Tax Commissioner by his application u/s 6 of RTI Act, 2005 dt. 30-8-2006.

“The Hon'ble CST had published some years back that monthly/quarterly (reference on website Sec. 4(1)(B)(VII) and (VIII) Service Cell meetings would be conducted by DCST in every District office of his division. It is our experience that barring some districts such type of meetings are not conducted regularly. In this connection following information may please be given to us:

1. Copy of the said Circular/Gazette/Guidelines about service cell meetings;
2. Number of meetings conducted in every district?
3. Copies of documents of the reasons for not conducting these meetings regularly.
4. Copies of the documents of the reasons for not publishing the list committees on website and on the notice boards of the every district sales tax offices.”

In response to this he received certain information from the SPIO in the Office of the Commissioner of Sales Tax and the same PIO requested the Branch Offices at Pune and Nagpur to supply the information pertaining to their Divisions. The Applicant has received certain information but he did not get the complete information, therefore, he filed First Appeal with the Appellate Officer with the

Commissionerate of Sales Tax who observed that Appellant has demanded copies of the documents showing the reasons for not conducting the meetings regularly. Such documents if they exist, should normally be available in Commissioner's office and he has directed the PIO to consider the Applicant's request for information in the light of the above observation.

It seems that the PIO has given certain information by letter dt. 27-9-2006. Having not being satisfied with the response Adv. Lulla has filed Second Appeal with this Commission on 19-1-2007 which was heard on 26-9-2007 when the following were present:

1. Shri Kishor Lulla ... Appellant
2. Shri V. V. Kulkarni
PIO Sales Tax Commr. Office
3. Shri B. A. Sable, A.O.
Sales Tax Commr. Office ... Respondents

The Appellant made it clear at the time of hearing, as per his observation, no proper importance is attached at divisional level in convening the service meetings. The importance of such meeting can hardly be over emphasised since head office of the Sales Tax Commissionerate is conducted regular meetings. The Appellant wanted reasons for not conducting such meetings and obviously there are no documents available in the Commissioner's office seeking reasons as to why at the District and Divisional level such meetings are not taken. Obviously such type of documents are not available, therefore, they have not been given. Commissioner's office agreed to issue fresh instructions about regularly convening these meetings since this exercise has been very useful. This satisfied the Appellant.

ORDER

Appeal is thus disposed of.

Sd/-
(Dr. S. V. Joshi)
Chief Information Commissioner

Place : Mumbai
Date : 29-9-2007

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