

KERALA HIGH COURT

Gangadharan Pillai

Vs.

Sales Tax Officer

O.P. No. 1895 of 1963

(P. Govindan Nair, J.)

30.07.1964

JUDGMENT

P. Govindan Nair, J.

1. An assessee assessed to sales tax for the year 1961-62 has filed this writ application and challenges the order exhibit P-2 passed by the second respondent, refusing to entertain the appeal that was taken by the petitioner from the order of assessment, exhibit P-1.

2. Exhibit P-1 order of assessment was served on the petitioner on 18th February, 1963. He presented an appeal petition before the 2nd respondent on 4th March, 1963. He also moved this Court in O.P. No. 630 of 1963 challenging the very same assessment order and sought a stay of the collection of tax. This Court, by order on C.M.P. No. 2066 of 1963 in O.P. No. 630 of 1963, granted interim stay on 22nd March, 1963, subject to the condition that the petitioner will pay Rs. 600 towards the tax assessed, before 30th June, 1963. The writ application as well as the Civil Miscellaneous Petition were disposed of on 26th June, 1963, with a direction that the stay of collection of the balance of tax will continue till the disposal of the appeal taken by the petitioner before the second respondent. It must be said here that the total tax imposed on the petitioner for the year is Rs. 1,420 and according to him, he had paid towards tax for that year before the order of this Court was passed in C.M.P. No. 2066 of 1963, a sum of Rs. 300. It is further stated by his counsel that a sum of Rs. 787-50 was also paid before the date fixed by this Court in the order in C.M.P. No. 2066 of 1963. It is not disputed that these two payments of Rs. 300 and Rs. 787-50 taken together will cover the tax admitted by the petitioner to be due from him.

3. The second respondent issued notice to the petitioner "to show that the admitted tax was paid". The petitioner appeared and stated that a part of the tax had been paid before the appeal petition was presented and a part as stated above, in accordance with the orders of this Court, before the date fixed by this Court.

4. Dealing with this matter, the second respondent stated in exhibit P-2:

"According to the second proviso to Section 14 of the Act no appeal shall be entertained

unless it is accompanied by satisfactory proof of payment of the tax admitted by the appellant to be due. In S.T.A.T. No. 715/61 dated 5th February, 1963, the Tribunal also has held that for purposes of entertaining the appeal proof has to be produced to show that the admitted tax was paid on or before the date on which the appeal was filed."

The second respondent therefore held that the appeal cannot be entertained, and he accordingly rejected the appeal, by exhibit P-2.

5. As a proposition of law, it appears to me not correct, that where the payment of the admitted tax has not been made on or before the date on which the appeal was filed, the necessary result would be that the appeal should be rejected. This seems to be the view of the second respondent.

6. The relevant provisions relating to this question are contained in Section 14 of the General Sales Tax Act, 1125, and Rule 29 of the General Sales Tax Rules, 1950. I extract the section and the rule below:

"14. Appeals.--(1) Any assessee objecting to an assessment made on him under Section 12 Sub-section (2) may, within thirty days from the date on which he was served with notice of the assessment, appeal to such authority as may be prescribed:

Provided that the appellate authority may admit an appeal preferred after the period of thirty days aforesaid, if the authority is satisfied that the assessee had sufficient cause for not preferring the appeal within that period: Provided further that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such installments thereof as might have become payable, as the case may be.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as such authority may think fit.

(4) Every order passed in appeal under this section shall, subject to the provisions of Section 15 to 15C, be final."

29. (1) Subject to the provisions of Section 14, any person aggrieved by an original order of the Sales Tax Officer may appeal to the Appellate Assistant Commissioner.

(2) Every such appeal shall be preferred within 30 days of the service of the order appealed against.

Provided that the appellate authority may admit an appeal preferred after a period of thirty days aforesaid if the authority is satisfied that the assessee had sufficient cause for not preferring the appeal within that period.

(3) Every such appeal shall be in Form XXV and shall be verified in the manner specified therein.

(4) The memorandum of appeal shall be accompanied by the order appealed against in original or by an authenticated copy thereof unless the omission to produce such order or copy is explained to the satisfaction of the appellate authority and by proof of payment of the tax admitted by the appellant to be due or of such installments thereof as might have become payable.

(5) The appeal may be sent to the appellate authority by post or may be presented to that authority or to such officer as the appellate authority may appoint in this behalf by the appellant or by his authorized agent or a legal practitioner.

(6) The appellate authority shall, after giving the appellant reasonable opportunity of being heard, pass such orders on the appeal as such authority thinks fit."

7. On a perusal of Section 14, it is clear that there are two steps in the life of an appeal. One is the preferring of an appeal and the other its admission. No doubt, after the admission there are further steps to be taken.

8. The second proviso to Section 14 states that an appeal shall not be entertained unless the appeal is accompanied by proof of payment of tax. And Sub-rule (4) of Rule 29 insists that a memorandum of appeal shall be accompanied by proof of the payment of the tax admitted by the appellant to be due. Proof of payment of tax is, therefore, one of the documents that must be filed along with the appeal memorandum. It appears to me that the mere presentation of an appeal petition without the necessary documents, will not amount to the preferring of an appeal as contemplated by Section 14(1). I further think that if an appeal petition has been filed without proof of payment of tax accompanying it, that appeal can be said to be preferred only when the proof of payment of tax is furnished. Such furnishing of the proof may take place within the period prescribed for preferring the appeal or after the lapse of that period. If the proof of payment of admitted tax is furnished within the period prescribed for filing the appeal, no question of not entertaining the appeal arises. If the furnishing of proof happens to be after the expiry of the period prescribed, the question will arise as to whether the appeal should be admitted or not. In such cases the first proviso to Section 14(1) will be attracted. And the question must be whether there has been sufficient cause for not preferring the appeal within the statutory period, viz., 30 days of the date of service of the assessment order.

9. Counsel on behalf of the petitioner submits that in this case, he had not been able to pay the admitted tax within 30 days of the service of the assessment order. He therefore approached this Court by a writ application and obtained time to pay the tax and the stay of collection of tax by the order of this Court in C.M.P. No. 2066 of 1963 in O.P. No. 630 of 1963. This was on the condition that payments should be made as directed in that order. This, he says, has been complied with. It is submitted by counsel on behalf of the petitioner that it was the petitioner's inability to pay the tax that prompted him to approach this Court. This Court in disposing of the writ application allowed the stay to continue till the disposal of the appeal and thus prevented any steps being taken for the collection of the balance of tax.

10. According to counsel for the petitioner, in these circumstances the question should have been considered by the second respondent as to whether the appeal could have been treated as having been preferred on the date on which the last payment towards the admitted tax was made. No doubt, proof of payment is necessary. But it is not the lack of proof of payments that has resulted

in the order exhibit P-2. The order exhibit P-2 has proceeded on the basis that the payments alleged by the petitioner have been made. Even so, it is felt that the second proviso to Section 14 of the General Sales Tax Act, 1125, compels refusal to entertain the appeal. This does not seem to me to be correct. The correct approach is to treat the appeal as having been preferred on the date on which proof of payment was furnished and then to see whether under the proviso to Section 14(1), there was sufficient cause or not to excuse the delay in preferring the appeal. I think I am supported in this view by the observations of Subba Rao, J., as he then was, in a decision reported in Rajah of *Venkatagiri v. Income Tax Commissioner*¹

11. On behalf of the revenue, the Government Pleader has relied on the decision reported in *Swastika Tannery of Jajmau v. Commissioner of Sales Tax, U.P., Lucknow*² I do not think that the question considered above has been dealt with in that decision. If in law, preferring of an appeal can take place only when the necessary documents have been placed before the authority before whom it should be placed there can be a preferring of an appeal only when all those documents were placed before that authority. If that was not done within the period provided, the question will always arise whether the appeal should be admitted or not. This will depend upon the question as to whether there was sufficient cause for excusing the delay in preferring the appeal. I think therefore that this question must be considered by the second respondent. I, therefore, set aside exhibit P-2 and direct the petitioner to move a petition before the second respondent stating the grounds for excusing the delay in preferring the appeal. The second respondent will consider that petition on the merits and pass appropriate order under the first proviso to Section 14 (1) of the General Sales Tax Act, 1125.

12. This writ application is disposed of as above. There will be no order as to costs.

¹ A.I.R. [1957] 1957 A.P. 276

²[1963] 14 S.T.C. 518 (luck)